

HOUSE BILL 105

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; AMENDING THE LODGERS' TAX TO ALTER CERTAIN EXEMPTIONS; CHANGING THE ALLOWABLE USES OF LODGERS' TAX REVENUE.

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

SECTION 1. Section 3-38-13 NMSA 1978 (being Laws 1969, Chapter 199, Section 1, as amended) is amended to read:

"3-38-13. SHORT TITLE.--Sections 3-38-13 through ~~[3-38-24]~~ 3-38-25 NMSA 1978 may be cited as the "Lodgers' Tax Act"."

SECTION 2. Section 3-38-15 NMSA 1978 (being Laws 1969, Chapter 199, Section 3, as amended) is amended to read:

"3-38-15. AUTHORIZATION OF TAX--LIMITATIONS ON USE OF PROCEEDS.--

A. A municipality may impose by ordinance an

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1 occupancy tax for revenues on lodging within the municipality,
2 and the board of county commissioners of a county may impose by
3 ordinance an occupancy tax for revenues on lodging within that
4 part of the county outside of the incorporated limits of a
5 municipality.

6 B. The occupancy tax shall not exceed five percent
7 of the gross taxable rent.

8 C. Every vendor who is furnishing any lodgings
9 within a municipality or county is exercising a taxable
10 privilege.

11 D. The following portions of the proceeds from the
12 occupancy tax that are collected based on the first thirty days
13 a vendee rents lodging in taxable premises shall be used only
14 for advertising, publicizing and promoting tourist-related
15 facilities and attractions [~~facilities~~] and tourist-related
16 events:

17 (1) if the municipality or county imposes an
18 occupancy tax of no more than two percent, not less than one-
19 fourth of the proceeds shall be used for those purposes;

20 (2) if the occupancy tax imposed is more than
21 two percent and the municipality is not located in a class A
22 county or the county is not a class A county, not less than
23 one-half of the proceeds from the first three percent of the
24 occupancy tax and not less than one-fourth of the proceeds from
25 the occupancy tax in excess of three percent shall be used for

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1 those purposes; and

2 (3) if the occupancy tax imposed is more than
3 two percent and the municipality is located in a class A county
4 or the county is a class A county, not less than one-half of
5 the proceeds from the occupancy tax shall be used for those
6 purposes.

7 E. The proceeds from the occupancy tax that are
8 collected based on the first thirty days a vendee rents lodging
9 in taxable premises in excess of the amount required to be used
10 for advertising, publicizing and promoting tourist-related
11 facilities and attractions [~~facilities~~] and tourist-related
12 events may be used for any purpose authorized in Section
13 3-38-21 NMSA 1978.

14 F. The proceeds from the occupancy tax that are
15 required to be used to advertise, publicize and promote
16 tourist-related facilities and attractions [~~facilities~~] and
17 tourist-related events shall be used within two years of the
18 close of the fiscal year in which they were collected and shall
19 not be accumulated beyond that date or used for any other
20 purpose.

21 G. Notwithstanding the provisions of Paragraph (2)
22 of Subsection D of this section, any use by a municipality or
23 county of occupancy tax proceeds on January 1, 1996 may
24 continue to be so used after July 1, 1996 in accordance with
25 the provisions of this section and Section 3-38-21 NMSA 1978 as

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1 they were in effect prior to July 1, 1996; provided, any change
2 in the use of those occupancy tax proceeds after July 1, 1996
3 is subject to the limitations of that paragraph.

4 H. Notwithstanding the provisions of Paragraph (2)
5 of Subsection D of this section, the payment of principal and
6 interest on outstanding bonds issued prior to January 1, 1996
7 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made
8 in accordance with the retirement schedules of the bonds
9 established at the time of issuance. The amount of
10 expenditures required under Paragraph (2) of Subsection D of
11 this section shall be reduced each year, if necessary, to make
12 the required payments of principal and interest of all
13 outstanding bonds issued prior to January 1, 1996."

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

16 "3-38-16. EXEMPTIONS.--

17 A. If the latest ordinance imposing an occupancy
18 tax passed before July 1, 2020, the occupancy tax shall not
19 apply:

20 [~~A.~~] (1) if a vendee:

21 [~~(1)~~] (a) has been a permanent resident
22 of the taxable premises for a period of at least thirty
23 consecutive days; or

24 [~~(2)~~] (b) enters into or has entered
25 into a written agreement for lodgings at the taxable premises

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1 for a period of at least thirty consecutive days;
2 [B-] (2) if the rent paid by a vendee is less
3 than two dollars (\$2.00) a day;
4 [C-] (3) to lodging accommodations at
5 institutions of the federal government, the state or any
6 political subdivision thereof;
7 [D-] (4) to lodging accommodations at
8 religious, charitable, educational or philanthropic
9 institutions, including accommodations at summer camps operated
10 by such institutions;
11 [E-] (5) to clinics, hospitals or other
12 medical facilities; or
13 [F-] (6) to privately owned and operated
14 convalescent homes or homes for the aged, infirm, indigent or
15 chronically ill.

16 B. If the latest ordinance imposing an occupancy
17 tax passed on or after July 1, 2020, the occupancy tax shall
18 not apply:

- 19 (1) if a vendee:
20 (a) has manifested an intent to make the
21 taxable premises a residence or household; or
22 (b) provides proof to a vendor that the
23 vendee's income is below one hundred eighty-five percent of the
24 federal poverty guidelines;

25 (2) if the rent paid by a vendee is less than

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1 two dollars (\$2.00) a day;

2 (3) to lodging accommodations at institutions
3 of the federal government, the state or any political
4 subdivision thereof;

5 (4) to lodging accommodations at religious,
6 charitable, educational or philanthropic institutions,
7 including accommodations at summer camps operated by such
8 institutions;

9 (5) to clinics, hospitals or other medical
10 facilities; or

11 (6) to privately owned and operated
12 convalescent homes or homes for the aged, infirm, indigent or
13 chronically ill."

14 SECTION 4. Section 3-38-21 NMSA 1978 (being Laws 1969,
15 Chapter 199, Section 9, as amended) is amended to read:

16 "3-38-21. ELIGIBLE USES OF TAX PROCEEDS.--

17 A. Subject to the limitations contained in Section
18 3-38-15 NMSA 1978, a municipality or county imposing an
19 occupancy tax may use the proceeds from the occupancy tax that
20 are collected based on the first thirty days a vendee rents
21 lodging in taxable premises to defray costs of:

22 (1) collecting and otherwise administering the
23 occupancy tax, including the performance of audits required by
24 the Lodgers' Tax Act pursuant to guidelines issued by the
25 department of finance and administration;

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1 (2) establishing, operating, purchasing,
2 constructing, otherwise acquiring, reconstructing, extending,
3 improving, equipping, furnishing or acquiring real property or
4 any interest in real property for the site or grounds for
5 tourist-related facilities and attractions or tourist-related
6 transportation systems of the municipality, the county in which
7 the municipality is located or the county;

8 (3) the principal of and interest on any prior
9 redemption premiums due in connection with and any other
10 charges pertaining to revenue bonds authorized by Section
11 3-38-23 or 3-38-24 NMSA 1978;

12 (4) advertising, publicizing and promoting
13 tourist-related attractions, facilities and events of the
14 municipality or county and tourist-related facilities,
15 attractions and events within the area;

16 (5) providing police and fire protection and
17 sanitation service for tourist-related facilities, attractions
18 and events located in the respective municipality or county;

19 (6) providing a required minimum revenue
20 guarantee for air service to the municipality or county to
21 increase the ability of tourists to easily access the
22 municipality's or county's tourist-related facilities,
23 attractions and events; or

24 (7) any combination of the foregoing purposes
25 or transactions stated in this section, but for no other

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1 municipal or county purpose.

2 B. A municipality or county imposing an occupancy
3 tax may use the proceeds from the occupancy tax that are
4 collected based on the thirty-first and subsequent days a
5 vendee rents lodging in taxable premises for any municipality
6 or county purpose; provided that the use is stated in the
7 ordinance imposing the tax.

8 [~~B.~~] C. As used in this section, "minimum revenue
9 guarantee" is the amount of money guaranteed by a municipality
10 or county to be earned by an airline providing air services to
11 and from that municipality or county, which is the difference
12 between the minimum flight charge revenue specified in the
13 contract between the municipality or county and the airline and
14 the amount of actual flight charge revenue received by the
15 airline that is less than that contractual amount."

16 SECTION 5. A new section of the Lodgers' Tax Act, Section
17 3-38-25 NMSA 1978, is enacted to read:

18 "3-38-25. [NEW MATERIAL] MAINTAINING REVENUE
19 DEDICATION.--If a municipality or county has dedicated any
20 amount of revenue attributable to a tax imposed pursuant to the
21 Lodgers' Tax Act, the municipality or county shall continue to
22 dedicate the same amount of revenue attributable to the tax
23 until the ordinance dedicating the revenue expires, the term of
24 the dedication expires, the governing body acts to change the
25 dedication or, in the case of bonded indebtedness, the debt is

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1 fully discharged or otherwise provided for in full."

2 SECTION 6. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2020.

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