

1 SENATE BILL 137

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING A DISTRIBUTION OF A CERTAIN
12 AMOUNT OF THE STATE GROSS RECEIPTS TAX IMPOSED ON CERTAIN
13 SERVICES; REQUIRING REPORTING OF THE LOCATION OF THE SELLER
14 WHEN REPORTING GROSS RECEIPTS; MAKING AN APPROPRIATION.

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

17 SECTION 1. Section 7-1-6.4 NMSA 1978 (being Laws 1983,
18 Chapter 211, Section 9, as amended) is amended to read:

19 "7-1-6.4. DISTRIBUTION--MUNICIPALITY FROM GROSS RECEIPTS
20 TAX.--

21 A. [~~Except as provided in Subsection B of this~~
22 ~~section~~] A distribution pursuant to Section 7-1-6.1 NMSA 1978
23 shall be made to each municipality in an amount, subject to any
24 increase or decrease made pursuant to Section 7-1-6.15 NMSA
25 1978, equal to the product of the quotient of one and two

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1 hundred twenty-five thousandths percent divided by the tax rate
2 imposed by Section 7-9-4 NMSA 1978 multiplied by the net
3 receipts, except net receipts attributable to a nonprofit
4 hospital licensed by the department of health, for the month
5 attributable to the gross receipts tax from:

6 (1) business locations ~~[(1)]~~ within ~~[that]~~ the
7 municipality,

8 ~~[(2) on land owned by the state, commonly~~
9 ~~known as the "state fairgrounds", within the exterior~~
10 ~~boundaries of that municipality;~~

11 ~~(3) outside the boundaries of any municipality~~
12 ~~on land owned by that municipality; and~~

13 ~~(4) on an Indian reservation or pueblo grant~~
14 ~~in an area that is contiguous to that municipality and in which~~
15 ~~the municipality performs services pursuant to a contract~~
16 ~~between the municipality and the Indian tribe or Indian pueblo~~
17 ~~if:~~

18 ~~(a) the contract describes an area in~~
19 ~~which the municipality is required to perform services and~~
20 ~~requires the municipality to perform services that are~~
21 ~~substantially the same as the services the municipality~~
22 ~~performs for itself; and~~

23 ~~(b) the governing body of the~~
24 ~~municipality has submitted a copy of the contract to the~~
25 ~~secretary.~~

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1 ~~B. If the reduction made by Laws 1991, Chapter 9,~~
2 ~~Section 9 to the distribution under this section impairs the~~
3 ~~ability of a municipality to meet its principal or interest~~
4 ~~payment obligations for revenue bonds outstanding prior to July~~
5 ~~1, 1991 that are secured by the pledge of all or part of the~~
6 ~~municipality's revenue from the distribution made under this~~
7 ~~section, then the amount distributed pursuant to this section~~
8 ~~to that municipality shall be increased by an amount sufficient~~
9 ~~to meet any required payment, provided that the distribution~~
10 ~~amount does not exceed the amount that would have been due that~~
11 ~~municipality under this section as it was in effect on June 30,~~
12 ~~1992] not including services for which a distribution is made~~
13 ~~to any municipality pursuant to Paragraph (2) of this~~
14 ~~subsection; and~~

15 (2) locations of sellers within the
16 municipality for services as reported pursuant to Section
17 7-1-14 NMSA 1978, not including the following services:

18 (a) construction services and
19 construction-related services performed for a construction
20 project in New Mexico; and

21 (b) services with respect to the selling
22 of real estate located in New Mexico.

23 ~~[C.]~~ B. A distribution pursuant to this section may
24 be adjusted for a distribution made to a tax increment
25 development district with respect to a portion of a gross

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1 receipts tax increment dedicated by a municipality pursuant to
2 the Tax Increment for Development Act.

3 ~~[D-]~~ C. As used in this section:

4 (1) "nonprofit hospital" means a hospital that
5 has been granted exemption from federal income tax by the
6 United States commissioner of internal revenue as an
7 organization described in Section 501(c)(3) of the Internal
8 Revenue Code; and

9 (2) "within the municipality" means a
10 location:

11 (a) within a municipality;

12 (b) on land owned by the state, commonly
13 known as the "state fairgrounds", within the exterior
14 boundaries of a municipality;

15 (c) outside the boundaries of a
16 municipality on land owned by the municipality; and

17 (d) on an Indian reservation or pueblo
18 grant in an area that is contiguous to a municipality and in
19 which the municipality performs services pursuant to a contract
20 between the municipality and the Indian tribe or Indian pueblo
21 if: 1) the contract describes an area in which the
22 municipality is required to perform services and requires the
23 municipality to perform services that are substantially the
24 same as the services the municipality performs for itself; and
25 2) the governing body of the municipality has submitted a copy

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1 of the contract to the secretary."

2 SECTION 2. Section 7-1-14 NMSA 1978 (being Laws 2020,
3 Chapter 80, Section 1) is amended to read:

4 "7-1-14. [~~BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF~~]
5 SOURCING RULES FOR REPORTING GROSS RECEIPTS AND USE--LOCATION-
6 CODE DATABASE AND LOCATION-RATE DATABASE.--

7 A. For purposes of the Gross Receipts and
8 Compensating Tax Act, Interstate Telecommunications Gross
9 Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any
10 act authorizing the imposition of a local option gross receipts
11 or compensating tax, a person that has gross receipts and a
12 person using property or services in New Mexico in a taxable
13 manner shall report [~~the gross receipts to~~] the proper business
14 location and the location of the seller for a person that has
15 gross receipts, as provided in this section.

16 B. The business location for gross receipts from
17 the sale, lease or granting of a license to use real property
18 located in New Mexico, and any related deductions, shall be the
19 location of the property.

20 C. The business location for gross receipts from
21 the sale or license of tangible personal property, and any
22 related deductions, shall be at the following locations:

23 (1) if the property is received by the
24 purchaser at the New Mexico [~~business~~] location of the seller,
25 the location of the seller;

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1 (2) if the property is not received by the
2 purchaser at [~~a business~~] the location of the seller, the
3 location indicated by instructions for delivery to the
4 purchaser, or the purchaser's donee, when known to the seller;

5 (3) if Paragraphs (1) and (2) of this
6 subsection do not apply, the location indicated by an address
7 for the purchaser available from the business records of the
8 seller that are maintained in the ordinary course of business;
9 provided that use of the address does not constitute bad faith;

10 (4) if Paragraphs (1) through (3) of this
11 subsection do not apply, the location for the purchaser
12 obtained during consummation of the sale, including the address
13 of a purchaser's payment instrument, if no other address is
14 available; provided that use of this address does not
15 constitute bad faith; or

16 (5) if Paragraphs (1) through (4) of this
17 subsection do not apply, including a circumstance in which the
18 seller is without sufficient information to apply those
19 standards, the location from which the property was shipped or
20 transmitted.

21 D. The business location for gross receipts from
22 the lease of tangible personal property, including vehicles,
23 other transportation equipment and other mobile tangible
24 personal property, and any related deductions, shall be the
25 location of primary use of the property, as indicated by the

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1 address for the property provided by the lessee that is
2 available to the lessor from the lessor's records maintained in
3 the ordinary course of business; provided that use of this
4 address does not constitute bad faith. The location of primary
5 ~~[business location]~~ use shall not be altered by intermittent
6 use at different locations, such as use of business property
7 that accompanies employees on business trips and service calls.

8 E. The business location for gross receipts from
9 the sale, lease or license of franchises, and any related
10 deductions, shall be where the franchise is used.

11 F. The business location for gross receipts from
12 the performance or sale of the following services, and any
13 related deductions, shall be at the following locations:

14 (1) for professional services performed in New
15 Mexico, other than construction-related services, or performed
16 outside New Mexico when the product of the service is initially
17 used in New Mexico, the location of the performer of the
18 service or seller of the product of the service, as
19 appropriate;

20 (2) for construction services and
21 construction-related services performed for a construction
22 project in New Mexico, the location of the construction site;

23 (3) for services with respect to the selling
24 of real estate located in New Mexico, the location of the real
25 estate;

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1 (4) for transportation of persons or property
2 in, into or from New Mexico, the location where the person or
3 property enters the vehicle; and

4 (5) for services other than those described in
5 Paragraphs (1) through (4) of this subsection, the location
6 where the product of the service is delivered.

7 G. Except as provided in Subsection H of this
8 section, the business location for uses of property or services
9 subject to the compensating tax shall be [~~reported at~~] the
10 [~~business~~] location at which gross receipts would have been
11 required to be reported had the transaction been subject to the
12 gross receipts tax.

13 H. If a person subject to the compensating tax can
14 demonstrate that the first use upon which compensating tax is
15 imposed occurred at a time and place different from the time
16 and place of the purchase, then the business location for the
17 compensating tax shall be [~~reported at~~] the [~~business~~] location
18 of the first use.

19 [~~I. The secretary shall designate codes to identify~~
20 ~~the business locations for a person's gross receipts, or use~~
21 ~~for purchases subject to the compensating tax, and deductions~~
22 ~~related to those receipts or that use shall be reported.~~

23 J.] I. The secretary shall develop a location-code
24 database that provides the business location codes and location
25 of seller codes designated by the secretary for purposes of

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1 reporting pursuant to [~~Subsection I of~~] this section. The
2 secretary shall also develop and provide to taxpayers a
3 location-rate database that sets out the tax rates applicable
4 to business locations within the state, by address, and sellers
5 who properly rely on this database shall not be liable for any
6 additional tax due to the use of an incorrect rate.

7 [~~K.~~] J. As used in this section:

8 [~~(1)~~] "~~business location~~" means the code
9 designated by the department to identify business locations and
10 required to be used to report the gross receipts, or use for
11 purchases subject to the compensating tax, and deductions
12 related to those receipts or that use;

13 ~~(2)~~] (1) "gross receipts" means, as
14 applicable, "gross receipts" as used in the Gross Receipts and
15 Compensating Tax Act and the Leased Vehicle Gross Receipts Tax
16 Act and "interstate telecommunications gross receipts" in the
17 Interstate Telecommunications Gross Receipts Tax Act;

18 [~~(3)~~] (2) "in-person service" means a service
19 physically provided in person by the service provider, where
20 the customer or the customer's real or tangible personal
21 property upon which the service is performed is in the same
22 location as the service provider at the time the service is
23 performed; and

24 [~~(4)~~] (3) "professional service" means a
25 service, other than an in-person service, that requires either

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1 an advanced degree from an accredited post-secondary
2 educational institution or a license from the state to
3 perform."

4 SECTION 3. APPROPRIATION.--One million dollars
5 (\$1,000,000) is appropriated from the general fund to the
6 taxation and revenue department for expenditure in fiscal years
7 2022 and 2023 to implement the provisions of this act. Any
8 unexpended or unencumbered balance remaining at the end of
9 fiscal year 2023 shall revert to the general fund.

10 SECTION 4. EFFECTIVE DATE.--The effective date of the
11 provisions of Sections 1 and 2 of this act is July 1, 2022.