

1 SENATE BILL 207

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 Peter Wirth

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10 AN ACT

11 RELATING TO PROPERTY; AMENDING PROVISIONS OF THE LODGERS' TAX
12 ACT; AUTHORIZING AN OCCUPANCY SURTAX ON CERTAIN SHORT-TERM
13 RENTALS PURSUANT TO THE LODGERS' TAX ACT; REQUIRING LOCAL
14 GOVERNMENTS THAT IMPOSE THE OCCUPANCY SURTAX TO USE THE
15 PROCEEDS TO DEFRAY THE COST OF AFFORDABLE HOUSING; EXCLUDING
16 CERTAIN SHORT-TERM RENTAL PROPERTY FROM THE DEFINITION OF
17 "RESIDENTIAL PROPERTY" IN THE PROPERTY TAX CODE; AMENDING FORM
18 REQUIREMENTS FOR NOTICES OF VALUATION SENT TO PROPERTY OWNERS;
19 REPEALING A SECTION OF THE PROPERTY TAX CODE THAT REQUIRES
20 PROPERTY TO BE PRESUMED CLASSIFIED AS NONRESIDENTIAL PROPERTY.
21

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

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

25 "3-38-14. DEFINITIONS.--As used in the Lodgers' Tax Act:

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

4 B. "lodging" means the transaction of furnishing
5 rooms or other accommodations by a vendor to a vendee who for
6 rent uses, possesses or has the right to use or possess the
7 rooms or other units of accommodations in or at a taxable
8 premises;

9 C. "lodgings" means the rooms or other
10 accommodations furnished by a vendor to a vendee by a taxable
11 service of lodging;

12 D. "occupancy surtax" means the surtax imposed by
13 Section 3-38-15.1 NMSA 1978;

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

16 ~~[E.]~~ F. "person" means a corporation, firm, other
17 body corporate, partnership, association or individual.
18 "Person" includes an executor, administrator, trustee, receiver
19 or other representative appointed according to law and acting
20 in a representative capacity. "Person" does not include the
21 United States of America, the state of New Mexico, any
22 corporation, department, instrumentality or agency of the
23 federal government or the state government or any political
24 subdivision of the state;

25 ~~[F.]~~ G. "rent" means the consideration received by

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1 a vendor in money, credits, property or other consideration
2 valued in money for lodgings subject to ~~[an occupancy]~~ a tax
3 authorized in the Lodgers' Tax Act;

4 ~~[G.]~~ H. "taxable premises" means a hotel, motel or
5 other premises used for lodging that is not the vendee's
6 household or primary residence;

7 ~~[H.]~~ I. "temporary lodging" means lodgings for the
8 purpose of housing a vendee within proximity of the vendee's
9 employment or job location;

10 ~~[I.]~~ J. "tourist" means a person who travels for
11 the purpose of business, pleasure or culture to a municipality
12 or county imposing an occupancy tax;

13 ~~[J.]~~ K. "tourist-related events" means events that
14 are planned for, promoted to and attended by tourists;

15 ~~[K.]~~ L. "tourist-related facilities and
16 attractions" means facilities and attractions that are intended
17 to be used by or visited by tourists;

18 ~~[L.]~~ M. "tourist-related transportation systems"
19 means transportation systems that provide transportation for
20 tourists to and from tourist-related facilities and attractions
21 and tourist-related events;

22 ~~[M.]~~ N. "vendee" means a natural person to whom
23 lodgings are furnished in the exercise of the taxable service
24 of lodging; and

25 ~~[N.]~~ O. "vendor" means a person or the person's

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1 agent furnishing lodgings in the exercise of the taxable
2 service of lodging."

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

5 "3-38-15.1. [NEW MATERIAL] OCCUPANCY SURTAX.--

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

11 B. A municipality or county imposing an occupancy
12 surtax shall use the proceeds from the surtax to defray the
13 cost of providing affordable housing or to leverage federal
14 funding for affordable housing.

15 C. As used in this section:

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

19 (2) "single-family rental" means a single-
20 family residence offered for rent for a term of less than
21 thirty days; and

22 (3) "single-family residence" means an
23 occupied residence, including an apartment, house, guest house,
24 cottage or condominium, in which at least one room or unit is
25 rented by a vendor through the use of advance reservations.

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1 "Single-family residence" does not include a hotel, motel,
2 lodging house, bed and breakfast establishment or property
3 offered as a time share, as that term is used in the New Mexico
4 Time Share Act."

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

7 "3-38-16. EXEMPTIONS.--The occupancy tax and occupancy
8 surtax shall not apply:

9 A. if a vendee:

10 (1) has been a permanent resident of the
11 taxable premises for a period of at least thirty consecutive
12 days, unless those premises are temporary lodging; or

13 (2) enters into or has entered into a written
14 agreement for lodgings at the taxable premises for a period of
15 at least thirty consecutive days, unless those premises are
16 temporary lodging;

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

19 C. to lodging accommodations at institutions of the
20 federal government, the state or any political subdivision
21 thereof;

22 D. to lodging accommodations at religious,
23 charitable, educational or philanthropic institutions,
24 including accommodations at summer camps operated by such
25 institutions;

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1 E. to clinics, hospitals or other medical
2 facilities; or

3 F. to privately owned and operated convalescent
4 homes or homes for the aged, infirm, indigent or chronically
5 ill."

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

8 "3-38-17. COLLECTION OF TAXES.--

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

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

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

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

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

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

10 "3-38-17.2. FINANCIAL REPORTING.--

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

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

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1 furnish a copy of this report to the advisory board when it is
2 filed with the division."

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

5 "3-38-17.3. ENFORCEMENT.--

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

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

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

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

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

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

21 "3-38-18. COLLECTION OF DELINQUENCIES.--

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

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

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

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

15 "3-38-18.1. LIEN FOR OCCUPANCY TAX--PAYMENT--CERTIFICATE
16 OF LIENS.--

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

24 B. Under process or order of court, no person shall
25 sell the property of any vendor without first ascertaining from

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

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

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

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

25 SECTION 11. Section 3-38-20 NMSA 1978 (being Laws 1969,

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1 Chapter 199, Section 8, as amended) is amended to read:

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

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

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

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

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1 surtax and the remittance of the proceeds thereof to the
2 municipality or county."

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

5 "3-38-21.1. CONTRACTING FOR SERVICES.--

6 A. The governing body of a municipality or county
7 may contract for the management of programs and activities
8 funded with revenue from the occupancy tax [~~authorized in~~
9 ~~Section 3-38-15 NMSA 1978~~] or occupancy surtax. The governing
10 body shall require periodic reports to the governing body, at
11 least quarterly, listing the expenditures for those periods.
12 Within ten days of receiving the reports, the governing body
13 shall furnish copies of them to the advisory board. Funds
14 provided to the contracting person or governmental agency shall
15 be maintained in a separate account established for that
16 purpose and shall not be commingled with 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. Section 7-35-2 NMSA 1978 (being Laws 1973,
14 Chapter 258, Section 2, as amended) is amended to read:

15 "7-35-2. DEFINITIONS.--As used in the Property Tax Code:

16 A. "abandoned real property" means real property:

17 (1) that is part of a subdivision where the
18 subdivision has a minimum of five thousand lots in delinquency
19 on the department's delinquent property tax list as prepared by
20 the appropriate county treasurer pursuant to Section 7-38-61
21 NMSA 1978 as of January 1, 2019;

22 (2) of which the subdivided lots are vacant;

23 (3) that is part of a subdivision plotted on
24 or before 1980;

25 (4) the property taxes, penalties and interest

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1 of which are delinquent for at least ten years; and

2 (5) that does not include property with
3 existing homes, businesses or other habitable structures;

4 B. "department" or "division" means the taxation
5 and revenue department, the secretary of taxation and revenue
6 or any employee of the department exercising authority lawfully
7 delegated to that employee by the secretary;

8 C. "director" means the secretary;

9 D. "livestock" means cattle, buffalo, horses,
10 mules, sheep, goats, swine, ratites and other domestic animals
11 useful to humans;

12 E. "manufactured home" means a manufactured home as
13 that term is defined in Section 66-1-4.11 NMSA 1978;

14 F. "net taxable value" means the value of property
15 upon which the tax is imposed and is determined by deducting
16 from taxable value the amount of any exemption authorized by
17 the Property Tax Code;

18 G. "nonresidential property" means property that is
19 not residential property;

20 H. "owner" means the person in whom is vested any
21 title to property;

22 I. "person" means an individual or any other legal
23 entity;

24 J. "property" means tangible property, real or
25 personal;

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1 K. "residential property" means property consisting
2 of one or more dwellings together with appurtenant structures,
3 the land underlying both the dwellings and the appurtenant
4 structures and a quantity of land reasonably necessary for
5 parking and other uses that facilitate the use of the dwellings
6 and appurtenant structures. As used in this subsection,
7 "dwellings" includes both manufactured homes and other
8 structures when used primarily for permanent human habitation,
9 but the term does not include structures when used primarily
10 for temporary or transient human habitation such as hotels,
11 motels and similar structures, or a single-family dwelling
12 offered for rent for a term of less than thirty days for sixty
13 percent or more of a tax year;

14 L. "secretary" means the secretary of taxation and
15 revenue and, except for purposes of Section 7-35-6 NMSA 1978
16 and Paragraphs (1) and (2) of Subsection B of Section 9-11-6.2
17 NMSA 1978, also includes the deputy secretary or a division
18 director or deputy division director delegated by the
19 secretary;

20 M. "tax" means the property tax imposed under the
21 Property Tax Code;

22 N. "taxable value" means the value of property
23 determined by applying the tax ratio to the value of the
24 property determined for property taxation purposes;

25 O. "tax rate" means the rate of the tax expressed
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1 in terms of dollars per thousand dollars of net taxable value
2 of property;

3 P. "tax ratio" means the percentage established
4 under the Property Tax Code that is applied to the value of
5 property determined for property taxation purposes in order to
6 derive taxable value; and

7 Q. "tax year" means the calendar year."

8 SECTION 14. Section 7-38-20 NMSA 1978 (being Laws 1973,
9 Chapter 258, Section 60, as amended) is amended to read:

10 "7-38-20. COUNTY ASSESSOR AND DEPARTMENT TO MAIL NOTICES
11 OF VALUATION.--

12 A. By April 1 of each year, the county assessor
13 shall mail a notice in a form prescribed by the county assessor
14 to each property owner informing the property owner of the net
15 taxable value of the property owner's property that has been
16 valued for property taxation purposes by the assessor and other
17 related information as required by Subsection D of this
18 section.

19 B. By May 1 of each year, the department shall mail
20 a notice in a form prescribed by the department to each
21 property owner informing the property owner of the net taxable
22 value of the property owner's property that has been valued for
23 property taxation purposes by the department and other related
24 information as required by Subsection D of this section.

25 C. Failure to receive the notice required by this

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1 section does not invalidate the value set on the property, any
2 property tax based on that value or any subsequent procedure or
3 proceeding instituted for the collection of the tax.

4 D. The notice required by this section shall state,
5 at a minimum:

- 6 (1) the property owner's name and address;
- 7 (2) the description or identification of the
8 property valued;
- 9 (3) the classification of the property valued;
- 10 (4) the value set on the property for property
11 taxation purposes;
- 12 (5) the tax ratio;
- 13 (6) the taxable value of the property for the
14 previous and current tax years;
- 15 (7) the tax rate from the previous tax year;
- 16 (8) the amount of tax from the previous tax
17 year;
- 18 (9) with respect to residential property,
19 instructions for calculating an estimated tax for the current
20 tax year, which shall be prominently displayed on the front of
21 the notice, and a disclaimer for such instructions similar to
22 the following:
23 "The calculation of property tax may be higher or lower
24 than the property tax that will actually be imposed.";
- 25 (10) the amount of any exemptions allowed and

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1 a statement of the net taxable value of the property after
2 deducting the exemptions;

3 (11) the allocations of net taxable values to
4 the governmental units;

5 (12) briefly, the eligibility requirements and
6 application procedures and deadline for claiming eligibility
7 for a limitation on increases in the valuation for property
8 taxation purposes of a single-family dwelling owned and
9 occupied by a person sixty-five years of age or older; and

10 (13) briefly, the procedures for protesting
11 the value determined for property taxation purposes,
12 classification, allocation of values to governmental units or
13 denial of a claim for an exemption or for the limitation on
14 increases in valuation for property taxation purposes.

15 E. The county assessor may mail the valuation
16 notice required pursuant to Subsection A of this section to
17 taxpayers with:

18 (1) the preceding tax year's property tax
19 bills if the net taxable value of the property has not changed
20 since the preceding taxable year. In this early mailing, the
21 county assessor shall provide clear notice to the taxpayer that
22 the valuation notice is for the succeeding tax year and that
23 the deadlines for protest of the value or classification of the
24 property apply to this mailing date; and

25 (2) a form that may be completed by the

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1 taxpayer and returned to the county assessor to update the
2 taxpayer's mailing address or the classification of the
3 taxpayer's property, or to claim an exemption or a limitation
4 on increases in valuation for property taxation purposes
5 pursuant to the Property Tax Code."

6 SECTION 15. REPEAL.--Section 7-38-17.1 NMSA 1978 (being
7 Laws 1981, Chapter 37, Section 68) is repealed.

8 SECTION 16. APPLICABILITY.--The provisions of Section 13
9 of this act apply to the 2025 and subsequent property tax
10 years.

11 SECTION 17. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2024.