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SENATE BILL 283

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO TAXATION; ELIMINATING THE GROSS RECEIPTS TAX ON CERTAIN FOOD SOLD AT RETAIL FOOD STORES; ENACTING THE LOCAL OPTION FOOD GROSS RECEIPTS TAX ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

" [NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--SALES OF FOOD AT RETAIL FOOD STORES.--Receipts from the sale of food at a retail food store may be deducted from the gross receipts."

Section 2. [NEW MATERIAL] SHORT TITLE.--Sections 2 through 11 of this act may be cited as the "Local Option Food Gross Receipts Tax Act".

Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the

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1 Local Option Food Gross Receipts Tax Act:

2 A. "county" means a county, including an H class
3 county;

4 B. "county area" means that portion of a county
5 located outside the boundaries of any municipality, except
6 that for H class counties, "county area" means the entire
7 county;

8 C. "department" means the taxation and revenue
9 department, the secretary of taxation and revenue or any
10 employee of the department exercising authority lawfully
11 delegated to that employee by the secretary;

12 D. "engaging in the retail food business" means
13 selling food at a retail food store;

14 E. "food" means any food or food product for home
15 consumption that meets the definition of food in 7 USCA
16 2012(g)(1) for purposes of the federal food stamp program;

17 F. "food gross receipts" means the total amount of
18 money or the value of other consideration received from
19 selling food at a retail food store in New Mexico; "food gross
20 receipts" excludes cash discounts allowed and taken and the
21 New Mexico food gross receipts tax;

22 G. "governing body of a county" means the board of
23 county commissioners of a county;

24 H. "governing body of a municipality" means the
25 city council or city commission of a city, the board of

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1 trustees of a town or village or the county council or board
2 of county commissioners of an H class county;

3 I. "municipality" means any incorporated city,
4 town or village, whether incorporated under general act,
5 special act or special charter, and an H class county;

6 J. "retail food store" means an establishment that
7 sells food for home preparation and consumption that meets the
8 definition of retail food store in 7 USCA 2012(k)(1) for
9 purposes of the federal food stamp program, whether or not the
10 establishment participates in the food stamp program; and

11 K. "state gross receipts tax" means the gross
12 receipts tax imposed pursuant to the Gross Receipts and
13 Compensating Tax Act.

14 Section 4. [NEW MATERIAL] IMPOSITION AND RATE OF TAX--
15 DENOMINATION AS MUNICIPAL FOOD GROSS RECEIPTS TAX. --

16 A. The majority of the members of the governing
17 body of a municipality may impose by ordinance an excise tax
18 on the food gross receipts of a person engaging in the retail
19 food business in the municipality for the privilege of
20 engaging in the retail food business at a rate equal to or
21 less than the aggregate of all local option gross receipts tax
22 rates imposed by the municipality on the gross receipts of a
23 person engaging in business in the municipality for the
24 privilege of engaging in business in the municipality.

25 B. The tax imposed in Subsection A of this section

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1 may be referred to as the "municipal food gross receipts tax".

2 C. The governing body of the municipality, at the
3 time of enacting an ordinance imposing the tax authorized in
4 Subsection A of this section, may dedicate the revenue for any
5 purpose for which any other municipal local option gross
6 receipts tax has been or may be dedicated or any other
7 specific or general municipal purpose.

8 D. If any reduction in revenue to a municipality
9 resulting from the deduction from the state gross receipts tax
10 of receipts from the sale of food at retail food stores
11 impairs the ability of the municipality to meet its principal
12 or interest payment obligations for revenue bonds outstanding
13 prior to January 1, 2000 that are secured by the pledge of all
14 or part of the municipality's revenue from any municipal local
15 option gross receipts tax imposed by the municipality, then
16 the municipality shall pledge an amount of revenue from the
17 municipal food gross receipts tax sufficient to meet any such
18 required payment obligations.

19 Section 5. [NEW MATERIAL] IMPOSITION AND RATE OF TAX--
20 DENOMINATION AS THE COUNTY FOOD GROSS RECEIPTS TAX.--

21 A. The majority of the members of the governing
22 body of a county may impose by ordinance an excise tax on the
23 food gross receipts of a person engaging in the retail food
24 business in the county area for the privilege of engaging in
25 the retail food business at a rate equal to or less than the

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1 aggregate of all local option gross receipts tax rates imposed
2 by the county only on the gross receipts of a person engaging
3 in business in the county area for the privilege of engaging
4 in business in the county area.

5 B. The majority of the members of the governing
6 body of a county may impose by ordinance an excise tax on the
7 food gross receipts of a person engaging in the retail food
8 business in the county for the privilege of engaging in the
9 retail food business at a rate equal to or less than the
10 aggregate of all local option gross receipts tax rates imposed
11 by the county on the gross receipts of a person engaging in
12 business in the county for the privilege of engaging in
13 business in the county, other than the imposed rates referred
14 to in Subsection A of this section.

15 C. The taxes imposed in Subsections A and B of
16 this section may be referred to as the "county food gross
17 receipts tax".

18 D. The governing body of the county, at the time
19 of enacting an ordinance imposing the tax authorized in
20 Subsection A of this section, may dedicate the revenue for any
21 purpose for which any other county local option gross receipts
22 tax has been or may be dedicated or any other specific or
23 general county purpose.

24 E. If any reduction in revenue to a county
25 resulting from the deduction from the state gross receipts tax

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1 of receipts from the sale of food at retail food stores
2 impairs the ability of the county to meet its principal or
3 interest payment obligations for revenue bonds outstanding
4 prior to January 1, 2000 that are secured by the pledge of all
5 or part of the county's revenue from any county local option
6 gross receipts tax imposed by the county, the county shall
7 pledge an amount of revenue from the county food gross
8 receipts tax sufficient to meet any such required payment
9 obligations.

10 Section 6. [NEW MATERIAL] EFFECTIVE DATE OF ORDINANCE. --

11 An ordinance imposing, amending or repealing a tax or an
12 increment of tax authorized by the Local Option Food Gross
13 Receipts Tax Act shall be effective on July 1 or January 1,
14 whichever date occurs first after the expiration of at least
15 three months from the date the adopted ordinance is mailed or
16 delivered to the department. The ordinance shall include that
17 effective date.

18 Section 7. [NEW MATERIAL] ORDINANCE SHALL CONFORM TO
19 REQUIREMENTS OF THE DEPARTMENT. --

20 A. The governing body of any municipality or
21 county imposing a tax pursuant to the Local Option Food Gross
22 Receipts Tax Act shall impose the tax by adopting the model
23 ordinance with respect to the tax furnished to the
24 municipality or county by the department. An ordinance that
25 does not conform substantially to the model ordinance of the

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1 department is not valid.

2 B. A certified copy of the ordinance imposing or
3 repealing a tax authorized pursuant to the Local Option Food
4 Gross Receipts Tax Act or changing the tax rate imposed shall
5 be mailed or delivered to the department within five days
6 after the later of the date the ordinance is adopted or the
7 date the results of any election held with respect to the
8 ordinance are certified to be in favor of the ordinance.

9 Section 8. [NEW MATERIAL] PRESUMPTION OF TAXABILITY. --To
10 prevent evasion of the municipal or county food gross receipts
11 tax and to aid in its administration, it is presumed that all
12 food gross receipts of a person engaging in the retail food
13 business are subject to the municipal food gross receipts tax
14 or county food gross receipts tax, as applicable.

15 Section 9. [NEW MATERIAL] DATE PAYMENT DUE. --The
16 municipal food gross receipts tax and the county food gross
17 receipts tax are to be paid to the department on or before the
18 twenty-fifth day of the month following the month in which the
19 taxable event occurs.

20 Section 10. [NEW MATERIAL] COLLECTION BY DEPARTMENT--
21 TRANSFER OF PROCEEDS. --

22 A. The department shall collect the tax imposed
23 pursuant to the provisions of the Local Option Food Gross
24 Receipts Tax Act in the same manner and at the same time it
25 collects the state gross receipts tax.

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1 B. The department shall transfer to each
2 municipality and county for which it is collecting a tax
3 pursuant to the provisions of the Local Option Food Gross
4 Receipts Tax Act the amount of the tax collected for the
5 municipality or county. The transfer to the municipality or
6 county shall be made within the month following the month in
7 which the tax is collected.

8 Section 11. [NEW MATERIAL] INTERPRETATION OF ACT--
9 ADMINISTRATION AND ENFORCEMENT OF ACT. --

10 A. The department shall interpret the provisions
11 of the Local Option Food Gross Receipts Tax Act.

12 B. The department shall administer and enforce the
13 collection of the tax authorized pursuant to the provisions of
14 the Local Option Food Gross Receipts Tax Act, and the Tax
15 Administration Act applies to the administration and
16 enforcement of each tax.

17 Section 12. 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
24 any increase or decrease made pursuant to Section 7-1-6.15
25 NMSA 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
2 rate imposed by Section 7-9-4 NMSA 1978 times the net receipts
3 for the month attributable to the gross receipts tax from
4 business locations:

5 (1) within that municipality;

6 (2) on land owned by the state, commonly
7 known as the "state fair grounds", within the exterior
8 boundaries of that municipality;

9 (3) outside the boundaries of any
10 municipality on land owned by that municipality; and

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

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

21 (b) the governing body of the
22 municipality has submitted a copy of the contract to the
23 secretary.

24 B. If the reduction made by Laws 1991, Chapter 9,
25 Section 9 to the distribution under this section impairs the

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1 ability of a municipality to meet its principal or interest
2 payment obligations for revenue bonds outstanding prior to
3 July 1, 1991 that are secured by the pledge of all or part of
4 the municipality's revenue from the distribution made under
5 this section, then the amount distributed pursuant to this
6 section to that municipality shall be increased by an amount
7 sufficient to meet any required payment, provided that the
8 distribution amount does not exceed the amount that would have
9 been due that municipality under this section as it was in
10 effect on June 30, 1992.

11 C. If any reduction to the distribution pursuant
12 to this section resulting from the enactment of Section 1 of
13 this 1999 act impairs the ability of a municipality to meet
14 its principal or interest payment obligations for revenue
15 bonds outstanding prior to January 1, 2000 that are secured by
16 the pledge of all or part of the municipality's revenue from
17 the distribution made pursuant to this section, the amount
18 distributed pursuant to this section to that municipality
19 shall be increased by an amount sufficient to meet any
20 required payment; provided the revenue from the maximum rate
21 of the food gross receipts tax that the municipality is
22 authorized to impose pursuant to the Local Option Food Gross
23 Receipts Tax Act is not sufficient to meet the obligation and
24 provided that the distribution amount does not exceed the
25 amount that would have been due that municipality pursuant to

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1 this section as it was in effect on December 31, 1999. "

2 Section 13. Section 7-9-3 NMSA 1978 (being Laws 1978,
3 Chapter 46, Section 1, as amended by Laws 1998, Chapter 92,
4 Section 4 and by Laws 1998, Chapter 95, Section 1 and also by
5 Laws 1998, Chapter 99, Section 3) is amended to read:

6 "7-9-3. DEFINITIONS. --As used in the Gross Receipts and
7 Compensating Tax Act:

8 A. "department" means the taxation and revenue
9 department, the secretary of taxation and revenue or any
10 employee of the department exercising authority lawfully
11 delegated to that employee by the secretary;

12 B. "buying" or "selling" means any transfer of
13 property for consideration or any performance of service for
14 consideration;

15 C. "construction" means building, altering,
16 repairing or demolishing in the ordinary course of business
17 any:

18 (1) road, highway, bridge, parking area or
19 related project;

20 (2) building, stadium or other structure;

21 (3) airport, subway or similar facility;

22 (4) park, trail, athletic field, golf course
23 or similar facility;

24 (5) dam, reservoir, canal, ditch or similar
25 facility;

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1 (6) sewerage or water treatment facility,
2 power generating plant, pump station, natural gas compressing
3 station, gas processing plant, coal gasification plant,
4 refinery, distillery or similar facility;

5 (7) sewerage, water, gas or other pipeline;

6 (8) transmission line;

7 (9) radio, television or other tower;

8 (10) water, oil or other storage tank;

9 (11) shaft, tunnel or other mining

10 appurtenance;

11 (12) microwave station or similar facility;

12 or

13 (13) similar work;

14 "construction" also means:

15 (14) leveling or clearing land;

16 (15) excavating earth;

17 (16) drilling wells of any type, including

18 seismograph shot holes or core drilling; or

19 (17) similar work;

20 D. "financial corporation" means any savings and
21 loan association or any incorporated savings and loan company,
22 trust company, mortgage banking company, consumer finance
23 company or other financial corporation;

24 E. "engaging in business" means carrying on or
25 causing to be carried on any activity with the purpose of

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1 direct or indirect benefit, except that "engaging in business"
2 does not include having a world wide web site as a third-party
3 content provider on a computer physically located in New
4 Mexico but owned by another nonaffiliated person;

5 F. "gross receipts" means the total amount of
6 money or the value of other consideration received from
7 selling property in New Mexico, from leasing property employed
8 in New Mexico, from selling services performed outside New
9 Mexico the product of which is initially used in New Mexico or
10 from performing services in New Mexico. In an exchange in
11 which the money or other consideration received does not
12 represent the value of the property or service exchanged,
13 "gross receipts" means the reasonable value of the property or
14 service exchanged.

- 15 (1) "Gross receipts" includes:
- 16 (a) any receipts from sales of tangible
17 personal property handled on consignment;
 - 18 (b) the total commissions or fees
19 derived from the business of buying, selling or promoting the
20 purchase, sale or leasing, as an agent or broker on a
21 commission or fee basis, of any property, service, stock, bond
22 or security;
 - 23 (c) amounts paid by members of any
24 cooperative association or similar organization for sales or
25 leases of personal property or performance of services by such

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1 organization; and

2 (d) amounts received from transmitting
3 messages or conversations by persons providing telephone or
4 telegraph services.

5 (2) "Gross receipts" excludes:

6 (a) cash discounts allowed and taken;

7 (b) New Mexico gross receipts tax,
8 governmental gross receipts tax and leased vehicle gross
9 receipts tax payable on transactions for the reporting period;

10 (c) taxes imposed pursuant to the
11 provisions of any local option gross receipts tax that is
12 payable on transactions for the reporting period;

13 (d) any gross receipts or sales taxes
14 imposed by an Indian nation, tribe or pueblo; provided that
15 the tax is approved, if approval is required by federal law or
16 regulation, by the secretary of the interior of the United
17 States; and provided further that the gross receipts or sales
18 tax imposed by the Indian nation, tribe or pueblo provides a
19 reciprocal exclusion for gross receipts, sales or gross
20 receipts-based excise taxes imposed by the state or its
21 political subdivisions;

22 (e) any type of time-price
23 differential; and

24 (f) amounts received solely on behalf
25 of another in a disclosed agency capacity.

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1 (3) When the sale of property or service is
2 made under any type of charge, conditional or time-sales
3 contract or the leasing of property is made under a leasing
4 contract, the seller or lessor may elect to treat all
5 receipts, excluding any type of time-price differential, under
6 such contracts as gross receipts as and when the payments are
7 actually received. If the seller or lessor transfers his
8 interest in any such contract to a third person, the seller or
9 lessor shall pay the gross receipts tax upon the full sale or
10 leasing contract amount, excluding any type of time-price
11 differential;

12 G. "manufacturing" means combining or processing
13 components or materials to increase their value for sale in
14 the ordinary course of business, but does not include
15 construction;

16 H. "person" means:

17 (1) any individual, estate, trust, receiver,
18 cooperative association, club, corporation, company, firm,
19 partnership, limited liability company, limited liability
20 partnership, joint venture, syndicate or other entity,
21 including any gas, water or electric utility owned or operated
22 by a county, municipality or other political subdivision of
23 the state; or

24 (2) any national, federal, state, Indian or
25 other governmental unit or subdivision, or any agency,

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1 department or instrumentality of any of the foregoing;

2 I. "property" means real property, tangible
3 personal property, licenses, franchises, patents, trademarks
4 and copyrights. Tangible personal property includes
5 electricity and manufactured homes;

6 J. "leasing" means any arrangement whereby, for a
7 consideration, property is employed for or by any person other
8 than the owner of the property, except that the granting of a
9 license to use property is the sale of a license and not a
10 lease;

11 K. "service" means all activities engaged in for
12 other persons for a consideration, which activities involve
13 predominantly the performance of a service as distinguished
14 from selling or leasing property. "Service" includes
15 activities performed by a person for its members or
16 shareholders. In determining what is a service, the intended
17 use, principal objective or ultimate objective of the
18 contracting parties shall not be controlling. "Service"
19 includes construction activities and all tangible personal
20 property that will become an ingredient or component part of a
21 construction project. Such tangible personal property retains
22 its character as tangible personal property until it is
23 installed as an ingredient or component part of a construction
24 project in New Mexico. However, sales of tangible personal
25 property that will become an ingredient or component part of a

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1 construction project to persons engaged in the construction
2 business are sales of tangible personal property;

3 L. "use" or "using" includes use, consumption or
4 storage other than storage for subsequent sale in the ordinary
5 course of business or for use solely outside this state;

6 M "secretary" means the secretary of taxation and
7 revenue or the secretary's delegate;

8 N. "manufactured home" means a movable or portable
9 housing structure for human occupancy that exceeds either a
10 width of eight feet or a length of forty feet constructed to
11 be towed on its own chassis and designed to be installed with
12 or without a permanent foundation;

13 O. "initial use" or "initially used" means the
14 first employment for the intended purpose and does not include
15 the following activities:

16 (1) observation of tests conducted by the
17 performer of services;

18 (2) participation in progress reviews,
19 briefings, consultations and conferences conducted by the
20 performer of services;

21 (3) review of preliminary drafts, drawings
22 and other materials prepared by the performer of the services;

23 (4) inspection of preliminary prototypes
24 developed by the performer of services; or

25 (5) similar activities;

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1 P. "research and development services" means any
2 activity engaged in for other persons for consideration, for
3 one or more of the following purposes:

4 (1) advancing basic knowledge in a recognized
5 field of natural science;

6 (2) advancing technology in a field of
7 technical endeavor;

8 (3) the development of a new or improved
9 product, process or system with new or improved function,
10 performance, reliability or quality, whether or not the new or
11 improved product, process or system is offered for sale, lease
12 or other transfer;

13 (4) the development of new uses or
14 applications for an existing product, process or system,
15 whether or not the new use or application is offered as the
16 rationale for purchase, lease or other transfer of the
17 product, process or system;

18 (5) analytical or survey activities
19 incorporating technology review, application, trade-off study,
20 modeling, simulation, conceptual design or similar activities,
21 whether or not offered for sale, lease or other transfer; or

22 (6) the design and development of prototypes
23 or the integration of systems incorporating advances,
24 developments or improvements included in Paragraphs (1)
25 through (5) of this subsection;

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1 Q. "local option gross receipts tax" means a tax
2 authorized to be imposed by a county or municipality upon the
3 taxpayer's gross receipts and required to be collected by the
4 department at the same time and in the same manner as the
5 gross receipts tax; "local option gross receipts tax" includes
6 the taxes imposed pursuant to the Municipal Local Option Gross
7 Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax
8 Act, [~~Special Municipal Gross Receipts Tax Act~~] County Local
9 Option Gross Receipts Taxes Act, Local Hospital Gross Receipts
10 Tax Act, County Correctional Facility Gross Receipts Tax Act
11 and such other acts as may be enacted authorizing counties or
12 municipalities to impose taxes on gross receipts, which taxes
13 are to be collected by the department; [~~and~~]

14 R. "prescription drugs" means insulin and
15 substances that are:

16 (1) dispensed by or under the supervision of
17 a licensed pharmacist or by a physician or other person
18 authorized under state law to do so;

19 (2) prescribed for a specified person by a
20 person authorized under state law to prescribe the substance;
21 and

22 (3) subject to the restrictions on sale
23 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353;

24 S. "food" means any food or food product for home
25 consumption that meets the definition of food in 7 USCA

1 2012(g)(1) for purposes of the federal food stamp program; and

2 T. "retail food store" means an establishment that
3 sells food for home preparation and consumption that meets the
4 definition of retail food store in 7 USCA 2012(k)(1) for
5 purposes of the federal food stamp program, whether or not the
6 establishment participates in the food stamp program."

7 Section 14. EFFECTIVE DATE. --

8 A. The effective date of the provisions of
9 Sections 2 through 11 of this act is July 1, 1999.

10 B. The effective date of the provisions of
11 Sections 1 and 13 of this act is January 1, 2000.

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