

Explanation of “HB-479 Fixes”

This draft deals with issues left over from the consolidation of several municipal and county local option gross receipts taxes accomplished by 2019’s HB-479.

Items concerning both municipal and county taxes—

(1) Although clearly it was the Legislature’s intent that any consolidated local option tax rate on the books at July 1, 2019 would continue in effect, HB-479 neglected to actually say so. This draft makes the intent explicit.

(2) In HB-479, it is unclear what authority municipal or county governing bodies have to change any revenue dedications of taxes consolidated into the municipal or county gross receipts taxes. Some of those dedications were voted upon by the electorate. The draft proposes that the local governing bodies are free to change or repeal revenue dedications by their own action unless the dedication had been ratified by the electorate, in which case any change must also be submitted to the voters.

(3) HB-479 removed the limits on the size of rate increments. While eliminating the seemingly arbitrary incremental sizes was a step forward toward endowing municipalities and counties with control over their own tax bases, a minimum size could also be useful in managing the overall gross receipts tax rate structure. A minimum of one-hundredth percent (0.01%) is suggested as granting adequate flexibility to local governments (the minimum increment in effect today is 0.0625%). It also will eventually lead to somewhat easier programming and related compliance for taxpayers.

Item concerning only county taxes—

(4) Prior to July 1, 2019, county gross receipts tax increments were imposable only on a county-wide basis. So any limit on the increments imposable necessarily applied to those imposed on a county-wide basis. Some of the rate authorizations consolidated by HB-479 into the county gross receipts tax, however, were (and are) imposable only on a county area basis. Since the structure of 7-20E-9 NMSA 1978 created by HB-479 clearly delineates between the two types of county gross receipts taxes, the limit on county-wide taxes should not be held to apply in any way to county area taxes. Yet since the term “county gross receipts tax” applies to both types, some additional wording is required to make the distinction obvious.

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Bill

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

INTRODUCED BY

AN ACT

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE TAX
ADMINISTRATION ACT AND GROSS RECEIPTS AND COMPENSATING TAX ACT.

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

SECTION 1. Section 7-19D-9 NMSA 1978 (being Laws 1978,
Chapter 151, Section 1, as amended) is amended to read:

"7-19D-9. MUNICIPAL GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE
RATE. --

A. The majority of the members of the governing body
of any municipality may impose by ordinance an excise tax on the
gross receipts of any person engaging in business in the
municipality for the privilege of engaging in business in the
municipality. A tax imposed pursuant to this section shall be
imposed by the enactment of one or more ordinances and, on or
after July 1, 2020, may be imposed in increments of one-hundredth

1 percent or multiples thereof; provided that, if at the time of
2 enacting the increment the total municipal gross receipts tax rate
3 is not an even multiple of one-hundredth percent, the municipality
4 may impose an increment in an amount sufficient to bring the total
5 rate to an even multiple of one-hundredth percent. The governing
6 body of a municipality may, at the time of enacting the ordinance,
7 dedicate the revenue for any municipal purpose. If the governing
8 body proposes to dedicate such revenue, the ordinance and, if any
9 election is held, the ballot shall clearly state the purpose to
10 which the revenue will be dedicated, and any revenue so dedicated
11 shall be used by the municipality for that purpose unless a
12 subsequent ordinance is adopted to change the purpose to which
13 dedicated or to place the revenue in the general fund of the
14 municipality.

15 B. The tax imposed pursuant to Subsection A of this
16 section may be referred to as the "municipal gross receipts tax".

17 C. The maximum rate of the municipal gross receipts
18 tax on the gross receipts of any person engaging in business in
19 the municipality shall not exceed two and one-half percent. Of
20 that two and one-half percent:

21 (1) a governing body may choose to require an
22 election to impose increments [~~that~~] up to a total of two and
23 five-hundredths percent; [~~and~~] but

24 (2) the remaining increments, [~~totaling~~] up to a
25 total of forty-five hundredths percent, shall not go into effect

1 until after an election is held and a majority of the voters in
2 the municipality voting in the election votes in favor of the tax.
3 Increments approved by voters prior to [~~the effective date of this~~
4 ~~2019 act~~] July 1, 2019 shall be included in the increments
5 approved by the voters, as provided in this paragraph.

6 D. An election shall be called on the questions of
7 disapproval or approval of any ordinance enacted pursuant to
8 Subsection C of this section or any ordinance amending such
9 ordinance:

10 (1) if the governing body chooses to provide in
11 the ordinance that it shall not be effective until the ordinance
12 is approved by the majority of the registered voters voting on the
13 question at an election to be held pursuant to the provisions of
14 the Local Election Act; or

15 (2) if the ordinance does not contain a mandatory
16 election provision as provided in Paragraph (1) of this
17 subsection, upon the filing of a petition requesting such an
18 election if the petition is filed:

19 (a) pursuant to the requirements of a
20 referendum provision contained in a municipal home-rule charter
21 and signed by the number of registered voters in the municipality
22 equal to the number of registered voters required in its charter
23 to seek a referendum; or

24 (b) in all other municipalities, with the
25 municipal clerk within thirty days after the adoption of such

1 ordinance and the petition has been signed by a number of
2 registered voters in the municipality equal to at least five
3 percent of the number of the voters in the municipality who were
4 registered to vote in the most recent regular municipal election.

5 E. The signatures on the petition filed in accordance
6 with Subsection D of this section shall be verified by the
7 municipal clerk. If the petition is verified by the municipal
8 clerk as containing the required number of signatures of
9 registered voters, the governing body shall adopt an election
10 resolution calling for the holding of a special election on the
11 question of approving or disapproving the ordinance unless the
12 ordinance is repealed before the adoption of the election
13 resolution. An election held pursuant to Subparagraph (a) or (b)
14 of Paragraph (2) of Subsection D of this section shall be called,
15 conducted and canvassed as provided in the Local Election Act, and
16 the election shall be held within seventy-five days after the date
17 the petition is verified by the municipal clerk or it may be held
18 in conjunction with a regular local election if such election
19 occurs within seventy-five days after the date of verification by
20 the municipal clerk.

21 F. If at an election called pursuant to Subsection D
22 of this section a majority of the registered voters voting on the
23 question approves the ordinance imposing the tax, the ordinance
24 shall become effective in accordance with the provisions of the
25 Municipal Local Option Gross Receipts Taxes Act. If at such an

1 election a majority of the registered voters voting on the
2 question disapproves the ordinance, the ordinance imposing the tax
3 shall be deemed repealed and the question of imposing any
4 increment of the municipal gross receipts tax authorized in this
5 section shall not be considered again by the governing body for a
6 period of one year from the date of the election.

7 G. Any law that imposes or authorizes the imposition
8 of a municipal gross receipts tax or that affects the municipal
9 gross receipts tax, or any law supplemental thereto or otherwise
10 appertaining thereto, shall not be repealed or amended or
11 otherwise directly or indirectly modified in such a manner as to
12 impair adversely any outstanding revenue bonds that may be secured
13 by a pledge of such municipal gross receipts tax unless such
14 outstanding revenue bonds have been discharged in full or
15 provision has been fully made therefor.

16 H. Rates imposed under, and having met the
17 requirements of, Sections 7-19D-10, 7-19D-11, 7-19D-12 or 7-19D-18
18 NMSA 1978 in effect on June 30, 2019 and which were consolidated
19 with the municipal gross receipts tax by Laws 2019, Chapter 274,
20 effective July 1, 2019, are deemed to be increments of the
21 municipal gross receipts tax as of July 1, 2019 and continue in
22 force until the rate expires under the terms of the ordinance
23 which imposed the rate or the rate is repealed by the
24 municipality. Any dedication of the tax revenue in effect on the
25 effective date of this act remains in effect until changed by the

1 governing body provided that, if the dedication were approved by
2 the electorate, any change to the dedication must also be approved
3 by the electorate."

4 **SECTION 2.** Section 7-20E-9 NMSA 1978 (being Laws 1983,
5 Chapter 213, Section 32, as amended) is amended to read:

6 "7-20E-9. COUNTY GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE
7 RATE--COUNTY HEALTH CARE ASSISTANCE FUND REQUIREMENTS. --

8 A. A majority of the members of the governing body of
9 a county may impose by ordinance an excise tax on the gross
10 receipts of a person engaging in business in the county or the
11 county area. A tax imposed pursuant to this section shall be
12 imposed by the enactment of one or more ordinances and may be
13 imposed in increments of one-hundredth percent, or multiples
14 thereof provided that, if the existing total county gross receipts
15 tax rate is not an even multiple of one-hundredth percent, the
16 county may impose an increment in an amount sufficient to bring
17 the total rate to an even multiple of one-hundredth percent. The
18 governing body may, at the time of enacting the ordinance,
19 dedicate the revenue for any county purpose.

20 B. The tax authorized by this section is to be
21 referred to as the "county gross receipts tax".

22 C. The maximum rate of the county gross receipts tax
23 imposable on a county-wide basis on the gross receipts of any
24 person engaging in business in a county shall not exceed one and
25 twenty-five hundredths percent. Of that one and twenty-five

1 hundredths percent:

2 (1) a governing body may choose to require an
3 election to impose increments ~~[that]~~ up to a total of one percent;
4 ~~[and]~~ but

5 (2) the remaining increments, up to a total of
6 twenty-five hundredths percent, shall not go into effect until
7 after an election is held and a majority of the voters in the
8 county voting in the election votes in favor of the tax.

9 Increments approved by voters prior to ~~[the effective date of this~~
10 ~~2019 act]~~ July 1, 2019 shall be included in the increments
11 approved by the voters, as provided in this paragraph.

12 D. In addition to the maximum imposable on a county-
13 wide basis, the maximum rate of the county gross receipts tax
14 imposable on a county area basis on the gross receipts of any
15 person engaging in business in a county area shall not exceed one-
16 half percent. Of that one-half percent:

17 (1) a governing body may choose to require an
18 election to impose increments that total twelve hundredths
19 percent; ~~[and]~~ but

20 (2) the remaining increments, ~~[totaling]~~ up to a
21 total of thirty-eight hundredths percent, shall not go into effect
22 until after an election is held and a majority of the voters in
23 the county area voting in the election votes in favor of the tax.

24 Increments approved by voters prior to the effective date of this
25 2019 act shall be included in the increments approved by the

1 voters, as provided in this paragraph.

2 E. A class A county with a county hospital operated
3 and maintained pursuant to a lease or operating agreement with a
4 state educational institution named in Article 12, Section 11 of
5 the constitution of New Mexico shall provide not less than one
6 million dollars (\$1,000,000) in funds, and that amount shall be
7 dedicated to the support of indigent patients who are residents of
8 that county. Funds for indigent care shall be made available each
9 month of each year the tax is in effect in an amount not less than
10 eighty-three thousand three hundred thirty-three dollars thirty-
11 three cents (\$83,333.33). The interest from the investment of
12 county funds for indigent care may be used for other assistance to
13 indigent persons, not to exceed twenty thousand dollars (\$20,000)
14 for all other assistance in any year.

15 F. A county, except a class A county with a county
16 hospital operated and maintained pursuant to a lease or operating
17 agreement with a state educational institution named in Article
18 12, Section 11 of the constitution of New Mexico, shall be
19 required to dedicate revenue produced by the imposition of a one-
20 eighth percent gross receipts tax increment for the support of
21 indigent patients who are residents of that county. A county that
22 imposed up to two one-eighth percent increments on January 1, 1996
23 for support of indigent patients in the county or, after January
24 1, 1996, imposes a one-eighth percent increment and dedicates one-
25 half of that increment for county indigent patient purposes shall

1 deposit the revenue dedicated for county indigent purposes that is
2 transferred to the county in the county health care assistance
3 fund, and such revenues shall be expended pursuant to the Indigent
4 Hospital and County Health Care Act.

5 G. Rates imposed under, and having met the
6 requirements of, Sections 7-20E-15, 7-20E-17, 7-20E-19, 7-20E-21,
7 7-20E-24 or 7-20E-28 NMSA 1978 in effect on June 30, 2019 and
8 which were consolidated with the county gross receipts tax by Laws
9 2019, Chapter 274, effective July 1, 2019, are deemed to be
10 increments of the county gross receipts tax as of July 1, 2019 and
11 continue in force until the rate expires under the terms of the
12 ordinance which imposed the rate or the rate is repealed by the
13 county. Any dedication of the tax revenue in an ordinance imposing
14 any of the specified rates remains in effect until changed by the
15 governing body provided that, if the dedication were approved by
16 the electorate, any change to the dedication must also be approved
17 by the electorate.”