

_____ BILL

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; PROVIDING FOR A TAX EXPENDITURE BUDGET;
PROVIDING FOR DESTINATION-BASED SOURCING FOR THE CANNABIS
EXCISE TAX; REQUIRING THE TAXATION AND REVENUE DEPARTMENT TO
MAKE PUBLICLY AVAILABLE CERTAIN REPORTS ON SPECIAL FUEL FOR
WHICH THE SPECIAL FUELS EXCISE TAX IS IMPOSED; CLARIFYING
SOURCING RULES FOR CERTAIN PROPERTY; PROVIDING THAT CERTAIN
LICENSES SHALL NOT BE ISSUED OR RENEWED IF THE LICENSEE IS A
DELINQUENT TAXPAYER FOR CERTAIN TAXES; AMENDING THE DEFINITIONS
OF "DISCLOSED AGENCY" AND "GROSS RECEIPTS" IN THE GROSS
RECEIPTS AND COMPENSATING TAX ACT; ALLOWING THE DEPARTMENT TO
REQUIRE RECEIPTS ALLOWED TO BE DEDUCTED FROM GROSS RECEIPTS TO
BE REPORTED SEPARATELY; INCLUDING THE USE OF SERVICES BY
GOVERNMENTAL AGENCIES IN A COMPENSATING TAX DEDUCTION;
INCLUDING THE SALE TO GOVERNMENTAL AGENCIES OF LICENSES TO USE
CERTAIN DIGITAL GOODS IN CERTAIN GROSS RECEIPTS TAX AND

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1 GOVERNMENTAL GROSS RECEIPTS TAX DEDUCTIONS; REMOVING A
2 REQUIREMENT THAT A GROSS RECEIPTS OR SIMILAR TAX LEVIED BY A
3 TRIBE BE AT A RATE NOT GREATER THAN THE TOTAL OF THE GROSS
4 RECEIPTS AND LOCAL OPTION GROSS RECEIPTS TAXES; AMENDING THE
5 DEFINITION OF "QUALIFIED RESEARCH" IN THE TECHNOLOGY JOBS AND
6 RESEARCH AND DEVELOPMENT TAX CREDIT ACT; DELETING AN EXPIRED
7 EXEMPTION FROM THE MOTOR VEHICLE EXCISE TAX; CLARIFYING THAT
8 THE PREMIUM TAX IS IMPOSED ON A TAXPAYER THAT IS AN INSURED
9 THAT PROCURES, CONTINUES OR RENEWS INSURANCE WITH A NONADMITTED
10 INSURER; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION
11 OF LAW BY REPEALING LAWS 2021, CHAPTER 65, SECTION 13;
12 AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. A new section of the Tax Administration Act is
16 enacted to read:

17 "[NEW MATERIAL] TAX EXPENDITURE BUDGET.--

18 A. No later than November 15 of each year, the
19 secretary shall compile and present a tax expenditure budget to
20 the governor, the revenue stabilization and tax policy
21 committee and the legislative finance committee and post the
22 tax expenditure budget to the department's website.

23 B. A tax expenditure budget shall include the
24 following information for each tax expenditure of a tax
25 administered by the department:

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- 1 (1) the statutory basis;
- 2 (2) the year of enactment, amendment or
- 3 repeal, if any;
- 4 (3) a brief description;
- 5 (4) the intended purpose, if specified in the
- 6 law providing for the tax expenditure;
- 7 (5) an estimate of the amount of foregone
- 8 revenue by fiscal year for the three fiscal years preceding the
- 9 current fiscal year, including the general fund, other state
- 10 funds and local government revenues;
- 11 (6) the number of taxpayers that claimed a tax
- 12 expenditure for each fiscal year reported, unless reporting of
- 13 such data is in a form that can be associated with or otherwise
- 14 identify, directly or indirectly, a particular taxpayer;
- 15 (7) the data source used for the estimate;
- 16 (8) a description of the reliability of the
- 17 estimate;
- 18 (9) an evaluation of the tax expenditure, if
- 19 required in statute for the specific expenditure; and
- 20 (10) a description of the tax expenditure's
- 21 effect on tax administration, if any.

22 C. The department may request from an executive
23 agency or a local government agency or official the information
24 necessary to complete a tax expenditure budget required by this
25 section. The agency or official shall comply with a request

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1 made pursuant to this section by the department as permitted by
2 law.

3 D. As used in this section, "tax expenditure" means
4 a provision of law administered by the department to reflect
5 state tax policy, as determined by the secretary, including
6 promoting the general welfare of citizens, giving preferential
7 tax treatment to a specific industry or reflecting a specific
8 purpose, including incentivizing consumer behavior, economic
9 development or job creation. A tax expenditure does not
10 include provisions of laws enacted to prevent violation of
11 state or federal law, prevent federal preemption, ensure comity
12 between governments, avoid multiple taxation or define a tax
13 base."

14 SECTION 2. Section 7-1-6.68 NMSA 1978 (being Laws 2021
15 (1st S.S.), Chapter 4, Section 50) is amended to read:

16 "7-1-6.68. DISTRIBUTION--CANNABIS EXCISE TAX--
17 MUNICIPALITIES AND COUNTIES.--

18 A. A distribution pursuant to Section 7-1-6.1 NMSA
19 1978 shall be made to each municipality, subject to any
20 increase or decrease made pursuant to Section 7-1-6.15 NMSA
21 1978, in an amount equal to thirty-three and thirty-three
22 hundredths percent of the net receipts attributable to the
23 cannabis excise tax from [~~cannabis retailers~~] business
24 locations within the municipality as reported pursuant to
25 Section 7-42-4 NMSA 1978.

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1 B. A distribution pursuant to Section 7-1-6.1 NMSA
2 1978 shall be made to each county in an amount equal to thirty-
3 three and thirty-three hundredths percent of the net receipts
4 attributable to the cannabis excise tax from [~~cannabis~~
5 ~~retailers~~] business locations within the county area of the
6 county as reported pursuant to Section 7-42-4 NMSA 1978.

7 C. The department may deduct an amount not to
8 exceed three percent of the distributions made pursuant to this
9 section for the reasonable costs for administering the
10 distributions.

11 D. As used in this section, "county area" means
12 that portion of a county located outside the boundaries of any
13 municipality."

14 SECTION 3. Section 7-1-8.2 NMSA 1978 (being Laws 2009,
15 Chapter 243, Section 4) is amended to read:

16 "7-1-8.2. INFORMATION REQUIRED TO BE REVEALED.--

17 A. The department shall:

18 (1) furnish returns and return information
19 required by a provision of the Tax Administration Act to be
20 made available to the public by the department;

21 (2) answer all inquiries concerning whether a
22 person is or is not a registered taxpayer for tax programs that
23 require registration, but nothing in this subsection shall be
24 construed to allow the department to answer inquiries
25 concerning whether a person has filed a tax return;

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1 (3) furnish, upon request for inspection by a
2 member of the public pursuant to:

3 (a) Section 7-1-28 or Section 7-1-29
4 NMSA 1978, the taxpayer name, abatement, refund or credit
5 amount, tax program or business tax credit and the date the
6 abatement, refund or credit was issued; and

7 (b) Section 7-1-21 NMSA 1978, the
8 installment agreement; and

9 (4) with respect to the ~~[tax]~~ taxes on
10 gasoline and special fuel imposed by the Gasoline Tax Act and
11 the Special Fuels Supplier Tax Act, make available for public
12 inspection at monthly intervals a report covering the number of
13 gallons of gasoline, ~~[and]~~ ethanol blended fuels and special
14 fuel received and deducted and the amount of tax paid by each
15 person required to file a gasoline tax return or special fuel
16 tax return or pay gasoline tax or special fuel excise tax in
17 the state of New Mexico.

18 B. Nothing in this section shall be construed to
19 require the release of information that would violate an
20 agreement between the state and the federal internal revenue
21 service for sharing of information or any provision or rule of
22 the federal Internal Revenue Code to which a state is subject."

23 SECTION 4. Section 7-1-14 NMSA 1978 (being Laws 2020,
24 Chapter 80, Section 1) is amended to read:

25 "7-1-14. ~~[BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF]~~

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1 SOURCING RULES FOR REPORTING GROSS RECEIPTS AND USE--LOCATION-
2 CODE DATABASE AND LOCATION-RATE DATABASE.--

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

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

16 C. The business location for gross receipts from
17 the sale or license of ~~[tangible personal]~~ property, other than
18 real property, and any related deductions, shall be at the
19 following locations:

20 (1) if the property is received by the
21 purchaser at the New Mexico ~~[business]~~ location of the seller,
22 the location of the seller;

23 (2) if the property is not received by the
24 purchaser at ~~[a business]~~ the location of the seller, the
25 location indicated by instructions for delivery to the

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1 purchaser, or the purchaser's donee, when known to the seller;

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

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

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

18 D. The business location for gross receipts from
19 the lease of tangible personal property, including vehicles,
20 other transportation equipment and other mobile tangible
21 personal property, and any related deductions, shall be the
22 location of primary use of the property, as indicated by the
23 address for the property provided by the lessee that is
24 available to the lessor from the lessor's records maintained in
25 the ordinary course of business; provided that use of this

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1 address does not constitute bad faith. The location of primary
2 [~~business location~~] use shall not be altered by intermittent
3 use at different locations, such as use of business property
4 that accompanies employees on business trips and service calls.

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

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

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

17 (2) for construction services and
18 construction-related services performed for a construction
19 project in New Mexico, the location of the construction site;

20 (3) for services with respect to the selling
21 of real estate located in New Mexico, the location of the real
22 estate;

23 (4) for transportation of persons or property
24 in, into or from New Mexico, the location where the person or
25 property enters the vehicle; and

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

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

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

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

20 ~~J.]~~ I. The secretary shall develop a location-code
21 database that provides the business location codes and place of
22 business location codes designated ~~[pursuant to Subsection I of~~
23 ~~this section]~~ by the secretary. The secretary shall also
24 develop and provide to taxpayers a location-rate database that
25 sets out the tax rates applicable to business locations within

1 the state, by address, and sellers who properly rely on this
2 database shall not be liable for any additional tax due to the
3 use of an incorrect rate.

4 [K.] J. As used in this section:

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

10 ~~(2)~~] (1) "gross receipts" means, as
11 applicable, "gross receipts" as used in the Gross Receipts and
12 Compensating Tax Act and the Leased Vehicle Gross Receipts Tax
13 Act and "interstate telecommunications gross receipts" in the
14 Interstate Telecommunications Gross Receipts Tax Act;

15 [~~(3)~~] (2) "in-person service" means a service
16 physically provided in person by the service provider, where
17 the customer or the customer's real or tangible personal
18 property upon which the service is performed is in the same
19 location as the service provider at the time the service is
20 performed; and

21 [~~(4)~~] (3) "professional service" means a
22 service, other than an in-person service, that requires either
23 an advanced degree from an accredited post-secondary
24 educational institution or a license from the state to
25 perform."

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1 SECTION 5. Section 7-1-82 NMSA 1978 (being Laws 1973,
2 Chapter 179, Section 1, as amended) is amended to read:

3 "7-1-82. TRANSFER, ASSIGNMENT, SALE, LEASE OR RENEWAL OF
4 LIQUOR LICENSE.--

5 A. The director of the [~~alcohol and gaming~~]
6 alcoholic beverage control division of the regulation and
7 licensing department shall not allow the transfer, assignment,
8 lease or sale of any liquor license pursuant to the provisions
9 of the Liquor Control Act until the director receives written
10 notification from the secretary or secretary's delegate that:

11 (1) the licensee or any person authorized to
12 use the license is not a delinquent taxpayer as [~~defined~~]
13 provided in Section 7-1-16 NMSA 1978 only with respect to the
14 liquor excise tax or the gross receipts tax; or

15 (2) the transferee, assignee, buyer or lessee
16 has entered into a written agreement with the secretary or
17 secretary's delegate in which the transferee, assignee, buyer
18 or lessee has assumed full liability for payment of all taxes
19 due or [~~which~~] that may become due from engaging in business
20 authorized by the liquor license.

21 B. The director of the [~~alcohol and gaming~~]
22 alcoholic beverage control division of the regulation and
23 licensing department shall not allow the renewal of any liquor
24 license pursuant to the provisions of the Liquor Control Act
25 until the director receives notification from the secretary or

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1 secretary's delegate that on a certain date:

2 (1) ~~[there is no assessed tax liability from~~
3 ~~engaging in business authorized by the liquor license or, if~~
4 ~~there is assessed tax liability, the licensee is not a~~
5 ~~delinquent taxpayer]~~ the licensee is not a delinquent taxpayer
6 as provided in Section 7-1-16 NMSA 1978 only with respect to
7 the liquor excise tax or the gross receipts tax; and

8 (2) there are no unfiled tax returns due from
9 ~~[engaging in business authorized by the liquor license]~~ the
10 licensee with respect to the liquor excise tax or the gross
11 receipts tax."

12 SECTION 6. Section 7-9-3 NMSA 1978 (being Laws 1978,
13 Chapter 46, Section 1, as amended) is amended to read:

14 "7-9-3. DEFINITIONS.--As used in the Gross Receipts and
15 Compensating Tax Act:

16 A. "buying" or "selling" means a transfer of
17 property for consideration or the performance of service for
18 consideration;

19 B. "department" means the taxation and revenue
20 department, the secretary of taxation and revenue or an
21 employee of the department exercising authority lawfully
22 delegated to that employee by the secretary;

23 C. "digital good" means a digital product delivered
24 electronically, including software, music, photography, video,
25 reading material, an application and a ringtone;

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1 D. "disclosed agency" means ~~[an agent receiving~~
2 ~~money on behalf of a principal if the agent or the agent's~~
3 ~~principal disclosed the agency relationship to a third party~~
4 ~~from which the agent receives money, or if the third party~~
5 ~~otherwise has actual knowledge that the agent receives money on~~
6 ~~behalf of the principal]~~ a person receiving money from a third
7 party on behalf of another if the person receiving the money,
8 or the person on whose behalf the money is received, disclosed
9 the relationship to the third party from whom the person
10 receives money, or if the third party otherwise has actual
11 knowledge that the person to whom the money is paid receives
12 the money on behalf of another;

13 E. "financial corporation" means a savings and loan
14 association or an incorporated savings and loan company, trust
15 company, mortgage banking company, consumer finance company or
16 other financial corporation;

17 F. "initial use" or "initially used" means the
18 first employment for the intended purpose and does not include
19 the following activities:

20 (1) observation of tests conducted by the
21 performer of services;

22 (2) participation in progress reviews,
23 briefings, consultations and conferences conducted by the
24 performer of services;

25 (3) review of preliminary drafts, drawings and

1 other materials prepared by the performer of services;

2 (4) inspection of preliminary prototypes
3 developed by the performer of services; or

4 (5) similar activities;

5 G. "lease" or "leasing" means an arrangement
6 whereby, for a consideration, the owner of property grants
7 another person the exclusive right to possess and use the
8 property for a definite term;

9 H. "licensing" or "license" means an arrangement
10 whereby, for a consideration, the owner of property grants
11 another person a revocable, non-exclusive right to use the
12 property;

13 I. "local option gross receipts tax" means a tax
14 authorized to be imposed by a county or municipality upon a
15 taxpayer's gross receipts and required to be collected by the
16 department at the same time and in the same manner as the gross
17 receipts tax;

18 J. "manufactured home" means a movable or portable
19 housing structure for human occupancy that exceeds either a
20 width of eight feet or a length of forty feet constructed to be
21 towed on its own chassis and designed to be installed with or
22 without a permanent foundation;

23 K. "manufacturing" means combining or processing
24 components or materials to increase their value for sale in the
25 ordinary course of business, but does not include construction

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1 services; farming; electric power generation; processing of
2 natural resources, including hydrocarbons; or the processing or
3 preparation of meals for immediate consumption;

4 L. "manufacturing service" means the service of
5 combining or processing components or materials owned by
6 another, but does not include construction services; farming;
7 electric power generation; processing of natural resources,
8 including hydrocarbons; or the processing or preparation of
9 meals for immediate consumption;

10 M. "marketplace provider" means a person who
11 facilitates the sale, lease or license of tangible personal
12 property or services or licenses for use of real property on a
13 marketplace seller's behalf, or on the marketplace provider's
14 own behalf, by:

15 (1) listing or advertising the sale, lease or
16 license, by any means, whether physical or electronic,
17 including by catalog, internet website or television or radio
18 broadcast; and

19 (2) either directly or indirectly, through
20 agreements or arrangements with third parties collecting
21 payment from the customer and transmitting that payment to the
22 seller, regardless of whether the marketplace provider receives
23 compensation or other consideration in exchange for the
24 marketplace provider's services;

25 N. "marketplace seller" means a person who sells,

1 leases or licenses tangible personal property or services or
2 who licenses the use of real property through a marketplace
3 provider;

4 O. "person" means:

5 (1) an individual, estate, trust, receiver,
6 cooperative association, club, corporation, company, firm,
7 partnership, limited liability company, limited liability
8 partnership, joint venture, syndicate or other entity,
9 including any gas, water or electric utility owned or operated
10 by a county, municipality or other political subdivision of the
11 state; or

12 (2) a national, federal, state, Indian or
13 other governmental unit or subdivision, or an agency,
14 department or instrumentality of any of the foregoing;

15 P. "property" means:

16 (1) real property;
17 (2) tangible personal property, including
18 electricity and manufactured homes;
19 (3) licenses, including licenses of digital
20 goods, but not including the licenses of copyrights, trademarks
21 or patents; and

22 (4) franchises;

23 Q. "research and development services" means an
24 activity engaged in for other persons for consideration, for
25 one or more of the following purposes:

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

3 (2) advancing technology in a field of
4 technical endeavor;

5 (3) developing a new or improved product,
6 process or system with new or improved function, performance,
7 reliability or quality, whether or not the new or improved
8 product, process or system is offered for sale, lease or other
9 transfer;

10 (4) developing new uses or applications for an
11 existing product, process or system, whether or not the new use
12 or application is offered as the rationale for purchase, lease
13 or other transfer of the product, process or system;

14 (5) developing analytical or survey activities
15 incorporating technology review, application, trade-off study,
16 modeling, simulation, conceptual design or similar activities,
17 whether or not offered for sale, lease or other transfer; or

18 (6) designing and developing prototypes or
19 integrating systems incorporating the advances, developments or
20 improvements included in Paragraphs (1) through (5) of this
21 subsection;

22 R. "secretary" means the secretary of taxation and
23 revenue or the secretary's delegate;

24 S. "service" means all activities engaged in for
25 other persons for a consideration, which activities involve

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1 predominantly the performance of a service as distinguished
2 from selling or leasing property. "Service" includes
3 activities performed by a person for its members or
4 shareholders. In determining what is a service, the intended
5 use, principal objective or ultimate objective of the
6 contracting parties shall not be controlling. "Service"
7 includes construction activities and all tangible personal
8 property that will become an ingredient or component part of a
9 construction project. That tangible personal property retains
10 its character as tangible personal property until it is
11 installed as an ingredient or component part of a construction
12 project in New Mexico. Sales of tangible personal property
13 that will become an ingredient or component part of a
14 construction project to persons engaged in the construction
15 business are sales of tangible personal property; and

16 T. "use" or "using" includes use, consumption or
17 storage other than storage for subsequent sale in the ordinary
18 course of business or for use solely outside this state."

19 SECTION 7. Section 7-9-3.5 NMSA 1978 (being Laws 2003,
20 Chapter 272, Section 3, as amended) is amended to read:

21 "7-9-3.5. DEFINITION--GROSS RECEIPTS.--

22 A. As used in the Gross Receipts and Compensating
23 Tax Act:

24 (1) "gross receipts" means the total amount of
25 money or the value of other consideration received from selling

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1 property in New Mexico, from leasing or licensing property
2 employed in New Mexico, from granting a right to use a
3 franchise employed in New Mexico, from selling services
4 performed outside New Mexico, the product of which is initially
5 used in New Mexico, or from performing services in New Mexico.

6 In an exchange in which the money or other consideration
7 received does not represent the value of the property or
8 service exchanged, "gross receipts" means the reasonable value
9 of the property or service exchanged;

10 (2) "gross receipts" includes:

11 (a) any receipts from sales of tangible
12 personal property handled on consignment;

13 (b) the total commissions or fees
14 derived from the business of buying, selling or promoting the
15 purchase, sale or lease, as an agent or broker on a commission
16 or fee basis, of any property, service, stock, bond or
17 security;

18 (c) amounts paid by members of any
19 cooperative association or similar organization for sales or
20 leases of personal property or performance of services by such
21 organization;

22 (d) amounts received from transmitting
23 messages or conversations by persons providing telephone or
24 telegraph services;

25 (e) amounts received by a New Mexico

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1 florist from the sale of flowers, plants or other products that
2 are customarily sold by florists where the sale is made
3 pursuant to orders placed with the New Mexico florist that are
4 filled and delivered outside New Mexico by an out-of-state
5 florist;

6 (f) the receipts of a home service
7 provider from providing mobile telecommunications services to
8 customers whose place of primary use is in New Mexico if: 1)
9 the mobile telecommunications services originate and terminate
10 in the same state, regardless of where the services originate,
11 terminate or pass through; and 2) the charges for mobile
12 telecommunications services are billed by or for a customer's
13 home service provider and are deemed provided by the home
14 service provider. For the purposes of this section, "home
15 service provider", "mobile telecommunications services",
16 "customer" and "place of primary use" have the meanings given
17 in the federal Mobile Telecommunications Sourcing Act; and

18 (g) receipts collected by a marketplace
19 provider engaging in business in the state from sales, leases
20 and licenses of tangible personal property, sales of licenses
21 and sales of services or licenses for use of real property that
22 are sourced to this state and are facilitated by the
23 marketplace provider on behalf of marketplace sellers,
24 regardless of whether the marketplace sellers are engaging in
25 business in the state; and

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(3) "gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) ~~[New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax]~~ all excise taxes imposed by the state and political subdivisions of the state payable on transactions for the reporting period;

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

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

(e) any type of time-price differential;

(f) amounts received solely on behalf of another in a disclosed agency capacity; and

(g) amounts received by a New Mexico florist from the sale of flowers, plants or other products that are customarily sold by florists where the sale is made

1 pursuant to orders placed with an out-of-state florist for
2 filling and delivery in New Mexico by a New Mexico florist.

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

14 SECTION 8. Section 7-9-6 NMSA 1978 (being Laws 1966,
15 Chapter 47, Section 6, as amended) is amended to read:

16 "7-9-6. SEPARATELY STATING AND REPORTING THE GROSS
17 RECEIPTS TAX.--

18 A. Taxpayers subject to the Gross Receipts and
19 Compensating Tax Act, when billing a customer, shall separately
20 state the amount of tax associated with the transaction or
21 provide a statement affirmatively indicating that the gross
22 receipts tax is included in the amount billed.

23 B. When the gross receipts tax is stated separately
24 on the books of the seller or lessor, and if the total amount
25 of tax that is stated separately on transactions reportable

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1 within one reporting period is in excess of the amount of gross
2 receipts tax otherwise payable on the transactions on which the
3 tax was stated separately, the excess amount of tax stated on
4 the transactions within that reporting period shall be included
5 in gross receipts.

6 C. The department may require receipts allowed to
7 be deducted from gross receipts by law to be reported
8 separately by rules promulgated by the department."

9 SECTION 9. Section 7-9-14 NMSA 1978 (being Laws 1969,
10 Chapter 144, Section 7, as amended) is amended to read:

11 "7-9-14. EXEMPTION--COMPENSATING TAX--GOVERNMENTAL
12 AGENCIES--INDIANS.--

13 A. Except as otherwise provided in this subsection,
14 there is exempted from the compensating tax the use of property
15 and services by the United States or the state of New Mexico or
16 any governmental unit or subdivision, agency, department or
17 instrumentality thereof. The exemption provided by this
18 subsection does not apply to:

19 (1) the use of property that is or will be
20 incorporated into a metropolitan redevelopment project under
21 the Metropolitan Redevelopment Code; or

22 (2) the use of construction material.

23 B. Exempted from the compensating tax is the use of
24 property by any Indian nation, tribe or pueblo or any
25 governmental unit, subdivision, agency, department or

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1 instrumentality thereof on Indian reservations or pueblo
2 grants."

3 SECTION 10. Section 7-9-46 NMSA 1978 (being Laws 1969,
4 Chapter 144, Section 36, as amended by Laws 2021, Chapter 65,
5 Section 13 and by Laws 2021, Chapter 66, Section 2) is amended
6 to read:

7 "7-9-46. DEDUCTION--GROSS RECEIPTS--GOVERNMENTAL GROSS
8 RECEIPTS--SALES TO MANUFACTURERS AND MANUFACTURING SERVICE
9 PROVIDERS.--

10 A. Receipts from selling tangible personal property
11 may be deducted from gross receipts or from governmental gross
12 receipts if the sale is made to a person engaged in the
13 business of manufacturing who delivers a nontaxable transaction
14 certificate to the seller or provides alternative evidence
15 pursuant to Section 7-9-43 NMSA 1978. The buyer [~~delivering~~
16 ~~the nontaxable transaction certificate~~] must incorporate the
17 tangible personal property as an ingredient or component part
18 of the product that the buyer is in the business of
19 manufacturing.

20 B. Prior to July 1, 2033, receipts from selling a
21 manufacturing consumable to a manufacturer or a manufacturing
22 service provider may be deducted from gross receipts or from
23 governmental gross receipts if the buyer delivers a nontaxable
24 transaction certificate to the seller or provides alternative
25 evidence pursuant to Section 7-9-43 NMSA 1978; provided that if

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1 the seller is a seller of electricity or fuel and is a party to
2 an agreement with the department pursuant to Section 7-1-21.1
3 NMSA 1978, a nontaxable transaction certificate shall be
4 required.

5 C. Prior to July 1, 2033, receipts from selling or
6 leasing qualified equipment may be deducted from gross receipts
7 if the sale is made to, or the lease is entered into with, a
8 person engaged in the business of manufacturing or a
9 manufacturing service provider who delivers a nontaxable
10 transaction certificate to the seller or provides alternative
11 evidence pursuant to Section 7-9-43 NMSA 1978; provided that a
12 manufacturer or manufacturing service provider delivering a
13 nontaxable transaction certificate or alternative evidence with
14 respect to the qualified equipment shall not claim an
15 investment credit pursuant to the Investment Credit Act for
16 that same equipment.

17 D. The purpose of the deductions provided in this
18 section is to encourage manufacturing businesses to locate in
19 New Mexico and to reduce the tax burden, including reducing
20 pyramiding, on the tangible personal property that is consumed
21 in the manufacturing process and that is purchased by
22 manufacturing businesses in New Mexico.

23 E. The department shall annually report to the
24 revenue stabilization and tax policy committee the aggregate
25 amount of deductions taken pursuant to this section, the number

1 of taxpayers claiming each of the deductions and any other
2 information that is necessary to determine that the deductions
3 are performing the purposes for which they are enacted.

4 F. A taxpayer deducting gross receipts pursuant to
5 this section shall report the amount deducted separately for
6 each deduction provided in this section and attribute the
7 amount of the deduction to the appropriate authorization
8 provided in this section in a manner required by the department
9 that facilitates the evaluation by the legislature of the
10 benefit to the state of these deductions.

11 G. As used in this section:

12 (1) "manufacturing consumable" means tangible
13 personal property, other than qualified equipment or an
14 ingredient or component part of a manufactured product, that is
15 incorporated into, destroyed, depleted or transformed in the
16 process of manufacturing a product, including electricity,
17 fuels, water, manufacturing aids and supplies, chemicals, gases
18 and other tangibles used to manufacture a product;

19 (2) "manufacturing operation" means a plant
20 operated by a manufacturer or manufacturing service provider
21 that employs personnel to perform production tasks to produce
22 goods, in conjunction with machinery and equipment; and

23 (3) "qualified equipment" means machinery,
24 equipment and tools, including component, repair, replacement
25 and spare parts thereof, that are used directly in the

1 manufacturing process of a manufacturing operation. "Qualified
2 equipment" includes computer hardware and software used
3 directly in the manufacturing process of a manufacturing
4 operation but excludes any motor vehicle that is required to be
5 registered in this state pursuant to the Motor Vehicle Code."

6 SECTION 11. Section 7-9-54 NMSA 1978 (being Laws 1969,
7 Chapter 144, Section 44, as amended) is amended to read:

8 "7-9-54. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
9 GROSS RECEIPTS TAX--SALES TO GOVERNMENTAL AGENCIES.--

10 A. Receipts from selling tangible personal
11 property, or from selling licenses to use digital goods for the
12 purpose of loaning those digital goods to the public, to the
13 United States or to New Mexico or a governmental unit,
14 subdivision, agency, department or instrumentality thereof may
15 be deducted from gross receipts or from governmental gross
16 receipts. Unless contrary to federal law, the deduction
17 provided by this subsection does not apply to:

18 (1) receipts from selling metalliferous
19 mineral ore;

20 (2) receipts from selling tangible personal
21 property that is or will be incorporated into a metropolitan
22 redevelopment project created under the Metropolitan
23 Redevelopment Code;

24 (3) receipts from selling construction
25 material, excluding tangible personal property, whether

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1 removable or non-removable, that is or would be classified for
2 depreciation purposes as three-year property, five-year
3 property, seven-year property or ten-year property, including
4 indirect costs related to the asset basis, by Section 168 of
5 the Internal Revenue Code of 1986, as that section may be
6 amended or renumbered; or

7 (4) that portion of the receipts from
8 performing a "service" that reflects the value of tangible
9 personal property utilized or produced in performance of such
10 service.

11 B. Receipts from selling tangible personal
12 property, or from selling licenses to use digital goods for the
13 purpose of loaning those digital goods to the public, for any
14 purpose to an Indian tribe, nation or pueblo or a governmental
15 unit, subdivision, agency, department or instrumentality
16 thereof for use on Indian reservations or pueblo grants may be
17 deducted from gross receipts or from governmental gross
18 receipts.

19 C. When a seller, in good faith, deducts receipts
20 for tangible personal property or licenses to use digital goods
21 for the purpose of loaning those digital goods to the public
22 sold to the state or a governmental unit, subdivision, agency,
23 department or instrumentality thereof, after receiving written
24 assurances from the buyer's representative that the property
25 sold is not construction material, the department shall not

1 assert in a later assessment or audit of the seller that the
2 receipts are not deductible pursuant to Paragraph (3) of
3 Subsection A of this section."

4 **SECTION 12.** Section 7-9-88.1 NMSA 1978 (being Laws 1999,
5 Chapter 223, Section 2, as amended) is amended to read:

6 "7-9-88.1. CREDIT--GROSS RECEIPTS TAX--TAX PAID TO
7 CERTAIN TRIBES.--

8 A. If on a taxable transaction taking place on
9 tribal land a qualifying gross receipts, sales or similar tax
10 has been levied by the tribe, the amount of the tribe's tax may
11 be credited against gross receipts tax due this state or its
12 political subdivisions pursuant to the Gross Receipts and
13 Compensating Tax Act and a local option gross receipts tax on
14 the same transaction. The amount of the credit shall be equal
15 to the lesser of seventy-five percent of the tax imposed by the
16 tribe on the receipts from the transaction or seventy-five
17 percent of the revenue produced by the sum of the rate of tax
18 imposed pursuant to the Gross Receipts and Compensating Tax Act
19 and the total of the rates of local option gross receipts taxes
20 imposed on the receipts from the same transaction.

21 Notwithstanding any other provision of law to the contrary, the
22 amount of credit taken and allowed shall be applied
23 proportionately against the amount of the gross receipts tax
24 and local option gross receipts taxes and against the amount of
25 distribution of those taxes pursuant to Section 7-1-6.1 NMSA

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1 1978.

2 B. A qualifying gross receipts, sales or similar
3 tax levied by the tribe shall be limited to a tax that:

4 (1) is substantially similar to the gross
5 receipts tax imposed by the Gross Receipts and Compensating Tax
6 Act;

7 (2) does not unlawfully discriminate among
8 persons or transactions based on membership in the tribe;

9 ~~[(3) is levied on the taxable transaction at a~~
10 ~~rate not greater than the total of the gross receipts tax rate~~
11 ~~and local option gross receipts tax rates imposed by this state~~
12 ~~and its political subdivisions located within the exterior~~
13 ~~boundaries of the tribe;~~

14 ~~(4)]~~ (3) provides a credit against the tribe's
15 tax equal to the lesser of twenty-five percent of the tax
16 imposed by the tribe on the receipts from the transactions or
17 twenty-five percent of the tax revenue produced by the sum of
18 the rate of tax imposed pursuant to the Gross Receipts and
19 Compensating Tax Act and the total of the rates of the local
20 option gross receipts taxes imposed on the receipts from the
21 same transactions; and

22 ~~[(5)]~~ (4) is subject to a cooperative
23 agreement between the tribe and the secretary entered into
24 pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the
25 time of the taxable transaction.

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1 C. For purposes of the tax credit allowed by this
2 section:

3 (1) "pueblo" means the Pueblo of Acoma,
4 Cochiti, Isleta, Jemez, Laguna, Nambe, Picuris, Pojoaque,
5 Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa
6 Clara, Santo Domingo, Taos, Tesuque, Zia or Zuni or the
7 nineteen New Mexico pueblos acting collectively;

8 (2) "tribal land" means all land that is owned
9 by a tribe located within the exterior boundaries of a tribe's
10 reservation or grant and all land held by the United States in
11 trust for that tribe; and

12 (3) "tribe" means a pueblo, the Jicarilla
13 Apache Nation or the Mescalero Apache Tribe."

14 SECTION 13. Section 7-9F-3 NMSA 1978 (being Laws 2000
15 (2nd S.S.), Chapter 22, Section 3, as amended by Laws 2019,
16 Chapter 270, Section 38 and by Laws 2019, Chapter 274, Section
17 12) is amended to read:

18 "7-9F-3. DEFINITIONS.--As used in the Technology Jobs and
19 Research and Development Tax Credit Act:

20 A. "affiliate" means a person who directly or
21 indirectly owns or controls, is owned or controlled by or is
22 under common ownership or control with another person through
23 ownership of voting securities or other ownership interests
24 representing a majority of the total voting power of the
25 entity;

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1 B. "annual payroll expense" means the wages paid or
2 payable to employees in the state by the taxpayer in the
3 taxable year for which the taxpayer applies for an additional
4 credit pursuant to the Technology Jobs and Research and
5 Development Tax Credit Act;

6 C. "base payroll expense" means the wages paid or
7 payable by the taxpayer in the taxable year prior to the
8 taxable year for which the taxpayer applies for an additional
9 credit pursuant to the Technology Jobs and Research and
10 Development Tax Credit Act, adjusted for any increase from the
11 preceding taxable year in the consumer price index for the
12 United States for all items as published by the United States
13 department of labor in the taxable year for which the
14 additional credit is claimed. In a taxable year during which a
15 taxpayer has been part of a business merger or acquisition or
16 other change in business organization, the taxpayer's base
17 payroll expense shall include the payroll expense of all
18 entities included in the reorganization for all positions that
19 are included in the business entity resulting from the
20 reorganization;

21 D. "department" means the taxation and revenue
22 department, the secretary of taxation and revenue or any
23 employee of the department exercising authority lawfully
24 delegated to that employee by the secretary;

25 E. "facility" means a factory, mill, plant,

1 refinery, warehouse, dairy, feedlot, building or complex of
2 buildings located within the state, including the land on which
3 it is located and all machinery, equipment and other real and
4 tangible personal property located at or within it and used in
5 connection with its operation;

6 F. "local option gross receipts tax" means a tax
7 authorized to be imposed by a county or municipality upon a
8 taxpayer's gross receipts, as that term is defined in the Gross
9 Receipts and Compensating Tax Act, and required to be collected
10 by the department at the same time and in the same manner as
11 the gross receipts tax;

12 G. "qualified expenditure" means an expenditure or
13 an allocated portion of an expenditure by a taxpayer in
14 connection with qualified research at a qualified facility,
15 including expenditures for depletable land and rent paid or
16 incurred for land, improvements, the allowable amount paid or
17 incurred to operate or maintain a facility, buildings,
18 equipment, computer software, computer software upgrades,
19 consultants and contractors performing work in New Mexico,
20 payroll, technical books and manuals and test materials, but
21 not including any expenditure on property that is owned by a
22 municipality or county in connection with an industrial revenue
23 bond project, property for which the taxpayer has received any
24 credit pursuant to the Investment Credit Act, property that was
25 owned by the taxpayer or an affiliate before July 3, 2000 or

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1 research and development expenditures reimbursed by a person
2 who is not an affiliate of the taxpayer. If a "qualified
3 expenditure" is an allocation of an expenditure, the cost
4 accounting methodology used for the allocation of the
5 expenditure shall be the same cost accounting methodology used
6 by the taxpayer in its other business activities;

7 H. "qualified facility" means a facility in New
8 Mexico at which qualified research is conducted other than a
9 facility operated by a taxpayer for the United States or any
10 agency, department or instrumentality thereof;

11 I. "qualified research" means ~~[research]~~:

12 (1) ~~[that is undertaken for the purpose of~~
13 ~~discovering information;~~

14 ~~(a) that is technological in nature; and~~
15 ~~(b) the application of which is intended~~
16 ~~to be useful in the development of a new or improved business~~
17 ~~component of the taxpayer]~~ "qualified research" as that term is
18 used in Section 41 of the federal Internal Revenue Code of
19 1986, as that section may be amended or renumbered; and

20 (2) substantially all of the activities of
21 which constitute elements of a process of experimentation
22 related to a new or improved function, performance, reliability
23 or quality, but not related to style, taste or cosmetic or
24 seasonal design factors;

25 J. "qualified research and development small

1 business" means a taxpayer that:

2 (1) employed no more than fifty employees as
3 determined by the number of employees for which the taxpayer
4 was liable for unemployment insurance coverage in the taxable
5 year for which an additional credit is claimed;

6 (2) had total qualified expenditures of no
7 more than five million dollars (\$5,000,000) in the taxable year
8 for which an additional credit is claimed; and

9 (3) did not have more than fifty percent of
10 its voting securities or other equity interest with the right
11 to designate or elect the board of directors or other governing
12 body of the business owned directly or indirectly by another
13 business;

14 K. "rural area" means any area of the state other
15 than the state fairgrounds, an incorporated municipality with a
16 population of thirty thousand or more according to the most
17 recent federal decennial census and any area within three miles
18 of the external boundaries of an incorporated municipality with
19 a population of thirty thousand or more according to the most
20 recent federal decennial census;

21 L. "taxpayer" means any of the following persons,
22 other than a federal, state or other governmental unit or
23 subdivision or an agency, department, institution or
24 instrumentality thereof:

25 (1) a person liable for payment of any tax;

1 (2) a person responsible for withholding and
2 payment or collection and payment of any tax;

3 (3) a person to whom an assessment has been
4 made if the assessment remains unabated or the assessed amount
5 has not been paid; or

6 (4) for purposes of the additional credit
7 against the taxpayer's income tax pursuant to the Technology
8 Jobs and Research and Development Tax Credit Act and to the
9 extent of their respective interest in that entity, the
10 shareholders, members, partners or other owners of:

11 (a) a small business corporation that
12 has elected to be treated as an S corporation for federal
13 income tax purposes; or

14 (b) an entity treated as a partnership
15 or disregarded entity for federal income tax purposes; and

16 M. "wages" means remuneration for services
17 performed by an employee in New Mexico for an employer."

18 SECTION 14. Section 7-12-9.1 NMSA 1978 (being Laws 2006,
19 Chapter 91, Section 7, as amended) is amended to read:

20 "7-12-9.1. LICENSING--GENERAL LICENSING PROVISIONS.--

21 A. A person shall not engage in the manufacture or
22 distribution of cigarettes in New Mexico without a license
23 issued by the department.

24 B. The department shall issue or renew a license
25 for a term not to exceed one year.

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1 C. The department may charge a license fee of up to
2 one hundred dollars (\$100) for each manufacturer's or
3 distributor's license issued or renewed.

4 D. An application for a license or renewal of a
5 license shall be submitted on a form determined by the
6 department and shall include:

7 (1) the name and address of the applicant and:

8 (a) if the applicant is a firm,
9 partnership or association, the name and address of each of its
10 members; or

11 (b) if the applicant is a corporation,
12 the name and address of each of its officers;

13 (2) the address of the applicant's principal
14 place of business and every location where the applicant's
15 business is conducted; and

16 (3) any other information the department may
17 require.

18 E. The department may issue a distributor's license
19 and a manufacturer's license to the same person.

20 F. Persons licensed as manufacturers or
21 distributors may sell stamped cigarettes at retail.

22 G. A license may not be granted, maintained or
23 renewed if one or more of the following conditions applies to
24 an applicant:

25 (1) the applicant [~~owes five hundred dollars~~

1 ~~(\$500) or more in delinquent cigarette taxes]~~ is a delinquent
2 taxpayer pursuant to Section 7-1-16 NMSA 1978 only with respect
3 to the cigarette tax or the gross receipts tax;

4 (2) the applicant has had a manufacturer's or
5 distributor's license revoked by the department or any other
6 state within the past two years;

7 (3) the applicant is convicted of a crime
8 related to contraband cigarettes, stolen cigarettes or
9 counterfeit stamps;

10 (4) the applicant is a manufacturer but not a
11 participating manufacturer as defined in Section II(jj) of the
12 master settlement agreement and the applicant is not in
13 compliance with the provisions of Section 6-4-13 NMSA 1978 or
14 the Tobacco Escrow Fund Act; or

15 (5) the applicant is a manufacturer and
16 imports cigarettes into the United States that are in violation
17 of 19 U.S.C. 1681a or manufactures cigarettes that do not
18 comply with the Federal Cigarette Labeling and Advertising Act.

19 H. In addition to a civil or criminal penalty
20 provided by law, upon a finding that a licensee has violated a
21 provision of the Cigarette Tax Act or the Tobacco Escrow Fund
22 Act or a rule adopted pursuant to either act, the department
23 may revoke or suspend the license or licenses of the licensee.

24 I. As used in this section, "applicant" includes a
25 person or persons owning, directly or indirectly, in the

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1 aggregate, more than ten percent of the ownership interest in
2 the business holding or applying for a license pursuant to the
3 Cigarette Tax Act."

4 SECTION 15. Section 7-14-6 NMSA 1978 (being Laws 1988,
5 Chapter 73, Section 16, as amended) is amended to read:

6 "7-14-6. EXEMPTIONS FROM TAX.--

7 A. A person who acquires a vehicle out of state
8 thirty or more days before establishing a domicile in this
9 state is exempt from the tax if the vehicle was acquired for
10 personal use.

11 B. A person applying for a certificate of title for
12 a vehicle registered in another state is exempt from the tax if
13 the person has previously registered and titled the vehicle in
14 New Mexico and has owned the vehicle continuously since that
15 time.

16 C. A vehicle with a certificate of title owned by
17 this state or any political subdivision is exempt from the tax.

18 D. A person is exempt from the tax if the person
19 has a disability at the time the person purchases a vehicle and
20 can prove to the motor vehicle division of the department or
21 its agent that modifications have been made to the vehicle that
22 are:

23 (1) due to that person's disability; and

24 (2) necessary to enable that person to drive
25 that vehicle or be transported in that vehicle.

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1 E. A person is exempt from the tax if the person is
2 a bona fide resident of New Mexico who served in the armed
3 forces of the United States and who suffered, while serving in
4 the armed forces or from a service-connected cause, the loss or
5 complete and total loss of use of:

6 (1) one or both legs at or above the ankle; or

7 (2) one or both arms at or above the wrist.

8 F. A person who acquires a vehicle for subsequent
9 lease shall be exempt from the tax if:

10 (1) the person does not use the vehicle in any
11 manner other than holding it for lease or sale or leasing or
12 selling it in the ordinary course of business;

13 (2) the lease is for a term of more than six
14 months;

15 (3) the receipts from the subsequent lease are
16 subject to the gross receipts tax; and

17 (4) the vehicle does not have a gross vehicle
18 weight of over twenty-six thousand pounds.

19 ~~[G. From July 1, 2004 through June 30, 2009,~~
20 ~~vehicles that are gasoline-electric hybrid vehicles with a~~
21 ~~United States environmental protection agency fuel economy~~
22 ~~rating of at least twenty-seven and one-half miles per gallon~~
23 ~~are eligible for a one-time exemption from the tax at the time~~
24 ~~of the issuance of the original certificate of title for the~~
25 ~~vehicle.]"~~

1 SECTION 16. Section 7-40-3 NMSA 1978 (being Laws 2018,
2 Chapter 57, Section 3, as amended by Laws 2021, Chapter 65,
3 Section 35 and by Laws 2021, Chapter 136, Section 2) is amended
4 to read:

5 "7-40-3. IMPOSITION AND RATE OF TAX--DENOMINATION OF
6 "PREMIUM TAX", "HEALTH INSURANCE PREMIUM SURTAX" AND "SELF-
7 INSURED GROUP TAX".--

8 A. The tax imposed pursuant to this subsection may
9 be referred to as the "premium tax". The premium tax is
10 imposed at a rate of three and three-thousandths percent of the
11 gross premiums and membership and policy fees received or
12 written by a taxpayer or, with respect to a taxpayer that is an
13 insured that procures, continues or renews insurance with a
14 nonadmitted insurer, paid by the taxpayer, on insurance or
15 contracts covering risks within the state during the preceding
16 calendar year. The premium tax shall not be imposed on self-
17 insured groups or on return premiums, dividends paid or
18 credited to policyholders or contract holders and premiums
19 received for reinsurance on New Mexico risks.

20 B. For a taxpayer that is an insurer lawfully
21 organized pursuant to the laws of the Republic of Mexico, the
22 premium tax shall apply solely to the taxpayer's gross premium
23 receipts from insurance policies issued by the taxpayer in New
24 Mexico that cover residents of New Mexico or property or risks
25 principally domiciled or located in New Mexico.

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1 C. With respect to a taxpayer that is a property
2 bondsman, "gross premiums" shall be considered any
3 consideration received as security or surety for a bail bond in
4 connection with a judicial proceeding.

5 D. The premium tax provided in Subsection A of this
6 section is imposed on the gross premiums received of a surplus
7 lines broker, less return premiums, on surplus lines insurance
8 where New Mexico is the home state of the insured transacted
9 under the surplus lines broker's license, as reported by the
10 surplus lines broker to the department on forms and in the
11 manner prescribed by the department. For purposes of this
12 subsection, "gross premiums" shall include any additional
13 amount charged the insured, including policy fees, risk
14 purchasing group fees and inspection fees; but "premiums" shall
15 not include any additional amount charged the insured for
16 local, state or federal taxes; regulatory authority fees; or
17 examination fees, if any. For a surplus lines policy issued to
18 an insured whose home state is New Mexico and where only a
19 portion of the risk is located in New Mexico, the entire
20 premium tax shall be paid in accordance with this section.

21 E. In addition to the premium tax, except as
22 provided in Subsection F of this section, a health insurance
23 premium surtax is imposed at a rate of three and seventy-five
24 hundredths percent of the gross health insurance premiums and
25 membership and policy fees received by the taxpayer on hospital

1 and medical expense incurred insurance or contracts; nonprofit
2 health care plan contracts, excluding dental or vision only
3 contracts; and health maintenance organization subscriber
4 contracts covering health risks within this state during the
5 preceding calendar year. The surtax shall not apply to return
6 health insurance premiums, dividends paid or credited to
7 policyholders or contract holders and health insurance premiums
8 received for reinsurance on New Mexico risks. The surtax
9 imposed pursuant to this subsection may be referred to as the
10 "health insurance premium surtax".

11 F. If an act of the United States congress is
12 signed into law that imposes the annual fee on health insurance
13 providers pursuant to Section 9010 of the federal Patient
14 Protection and Affordable Care Act, or that imposes a
15 substantially similar fee on the same class of taxpayers, the
16 rate of the health insurance premium surtax shall be decreased
17 at a rate equal to the rate of the annual fee imposed; provided
18 that the rate of the health insurance premium surtax shall not
19 be less than one percent. A reduction in the health insurance
20 premium surtax pursuant to this subsection shall go into effect
21 on the later of the effective date of the imposition of the
22 federal annual fee or ninety days after the congressional act
23 imposing the federal annual fee is signed into law.

24 G. A tax is imposed at a rate of nine-tenths
25 percent on the net premiums, as defined in the Group Self-

1 Insurance Act, received or written by a self-insured group
2 within the state during the preceding calendar year. The tax
3 imposed pursuant to this subsection may be referred to as the
4 "self-insured group tax".

5 SECTION 17. Section 7-42-4 NMSA 1978 (being Laws 2021
6 (1st S.S.), Chapter 4, Section 46) is amended to read:

7 "7-42-4. DATE PAYMENT DUE--BUSINESS LOCATION REPORTING.--

8 A. The cannabis excise tax is to be paid on or
9 before the twenty-fifth day of the month following the month in
10 which the taxable sale occurs.

11 B. The business location for reporting the sale of
12 cannabis products shall be at the following locations:

13 (1) if the cannabis product is received by the
14 purchaser at the New Mexico location of the cannabis retailer,
15 the location of the cannabis retailer;

16 (2) if the cannabis product is not received by
17 the purchaser at a location of the cannabis retailer, the
18 location indicated by instructions for delivery to the
19 purchaser, or the purchaser's donee, when known to the cannabis
20 retailer;

21 (3) if Paragraphs (1) and (2) of this
22 subsection do not apply, the location indicated by an address
23 for the purchaser available from the business records of the
24 cannabis retailer that are maintained in the ordinary course of
25 business; provided that use of the address does not constitute

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1 bad faith;

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

8 (5) if Paragraphs (1) through (4) of this
9 subsection do not apply, including a circumstance in which the
10 cannabis retailer is without sufficient information to apply
11 those standards, the location from which the cannabis product
12 is shipped or transmitted."

13 SECTION 18. Section 26-2C-6 NMSA 1978 (being Laws 2021
14 (1st S.S.), Chapter 4, Section 6) is amended to read:

15 "26-2C-6. LICENSING CANNABIS ACTIVITIES--LIMITATIONS--
16 MEDICAL CANNABIS LEGACY LICENSING--CANNABIS SHORTAGE FOR
17 MEDICAL PROGRAM.--

18 A. The division shall regulate and administer and
19 may collect fees in connection with the administration of:

20 (1) commercial cannabis activity and licensing
21 related to commercial cannabis activity;

22 (2) the medical cannabis program, except for
23 the medical cannabis registry; and

24 (3) all aspects of cannabis relating to
25 cannabis training and education programs.

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1 B. The division shall follow the provisions of the
2 Uniform Licensing Act when licensing or permitting the
3 following:

- 4 (1) cannabis consumption areas;
- 5 (2) cannabis couriers;
- 6 (3) cannabis manufacturers;
- 7 (4) cannabis producer microbusinesses;
- 8 (5) cannabis producers;
- 9 (6) cannabis research laboratories;
- 10 (7) cannabis retailers;
- 11 (8) cannabis servers;
- 12 (9) cannabis testing laboratories;
- 13 (10) cannabis training and education programs;
- 14 (11) integrated cannabis microbusinesses; and
- 15 (12) vertically integrated cannabis
- 16 establishments.

17 C. The division shall include a clear designation
18 on all licenses and permits that indicates whether the license
19 or permit is for medical cannabis activity, commercial cannabis
20 activity or both or for cannabis training and education
21 programs.

22 D. The division shall issue a license to a cannabis
23 retailer applicant at a discount if the applicant provides
24 documentation of an agreement to accept cannabis products on
25 consignment from a cannabis producer microbusiness or an

1 integrated cannabis microbusiness licensed pursuant the
2 Cannabis Regulation Act.

3 E. A license is valid for twelve months from the
4 date the license is issued and may be renewed annually, except
5 that a license issued for a cannabis training and education
6 program is valid until terminated by the licensee or suspended
7 or revoked by the division.

8 F. The director shall not renew a license issued
9 pursuant to the provisions of the Cannabis Regulation Act until
10 the director receives notification from the secretary of
11 taxation and revenue or the secretary's designee that on a
12 certain date:

13 (1) the licensee is not a delinquent taxpayer
14 pursuant to Section 7-1-16 NMSA 1978 only with respect to the
15 cannabis excise tax or the gross receipts tax; and

16 (2) there are no unfiled tax returns due [~~from~~
17 ~~engaging in business authorized by the license~~] with respect to
18 the cannabis excise tax or the gross receipts tax.

19 G. No license shall be transferable or assignable
20 from a licensee to another person. The division shall not
21 allow a person that is licensed as any type of cannabis
22 establishment other than a cannabis research laboratory to
23 hold, directly or indirectly, a cannabis testing laboratory
24 license.

25 H. Except for verification of age, the division

1 shall not require licensees to request information from
2 consumers or impose any residency requirement upon consumers
3 for the purchase of cannabis products pursuant to the
4 commercial cannabis activity authorized by the Cannabis
5 Regulation Act. The division may require licensees to request
6 information from consumers for the purchase of cannabis
7 products pursuant to the medical cannabis program, which may
8 include the presentation of legal identification issued by an
9 authorized governmental entity or other documents as required
10 by the medical cannabis program.

11 I. Except as otherwise provided in the Cannabis
12 Regulation Act, the division shall not limit the number of
13 licensed premises a licensee may occupy or operate under a
14 license. Multiple licensees may occupy a single licensed
15 premises, and the division shall not place any restriction or
16 prohibition on the number of licensees occupying a single
17 licensed premises or on the number of licensed premises of a
18 cannabis establishment except as otherwise specifically
19 provided for by the Cannabis Regulation Act. A licensee may
20 conduct any lawful activity or any combination of lawful
21 activities at a licensed premises; provided that the licensee
22 is not a licensee pursuant to the Liquor Control Act. Smoking
23 in a cannabis consumption area on a licensed premises shall be
24 allowed only if the cannabis consumption area is in a
25 designated smoking area or in a standalone building from which

1 smoke does not infiltrate other indoor workplaces or other
2 indoor public places where smoking is otherwise prohibited
3 pursuant to the Dee Johnson Clean Indoor Air Act.

4 J. Licensees are specifically allowed to conduct
5 other licensed activities, including activities pursuant to the
6 Hemp Manufacturing Act, except for sales of alcoholic
7 beverages.

8 K. A person properly licensed and in good standing
9 pursuant to the Lynn and Erin Compassionate Use Act on the
10 effective date of the Cannabis Regulation Act may continue to
11 operate under that license for medical cannabis until
12 comparable licenses for commercial cannabis activity are
13 available. The division shall determine when retail sales of
14 commercial cannabis products begin, but no later than April 1,
15 2022. A facility of such a licensee, upon issuance of the
16 applicable cannabis establishment license, shall constitute
17 licensed premises of the licensee and the licensee shall be
18 entitled to continued and uninterrupted operations of the
19 licensed premises. As to activity under the medical cannabis
20 program, the licensee shall continue to operate under rules
21 promulgated for the medical cannabis program until the division
22 promulgates rules for medical cannabis activity, except that a
23 qualified patient, a primary caregiver and a reciprocal
24 participant shall not be prohibited from purchasing and
25 obtaining cannabis products pursuant to the medical cannabis

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1 program.

2 L. To address a shortage of cannabis supply in the
3 medical cannabis program, the division may:

4 (1) require all cannabis establishment
5 licensees to ensure that at least ten percent of their cannabis
6 in stock on a monthly basis is designated for sale to qualified
7 patients, primary caregivers and reciprocal participants;

8 (2) initially take reasonable measures to
9 expeditiously incentivize increased production of cannabis
10 plants to remedy a shortage of cannabis supply in the medical
11 cannabis program;

12 (3) after having first exhausted measures to
13 increase production of cannabis plants to address the shortage
14 of cannabis supply in the medical cannabis program, exclude
15 commercial cannabis activity from the scope of new licenses
16 issued to initial applicants for a vertically integrated
17 cannabis establishment, cannabis producer, integrated cannabis
18 microbusiness, cannabis producer microbusiness or cannabis
19 manufacturer license, which limitation shall be in force for a
20 period of at least six months; and

21 (4) require licensees who are licensed to
22 produce cannabis to produce a specified quota of mature
23 cannabis plants to be designated for use in the medical
24 cannabis program; provided that:

25 (a) the division may require a licensee

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1 to devote no more than twenty-five percent of the licensee's
2 cultivated cannabis plants on a monthly basis for use in the
3 medical cannabis program; and

4 (b) the division may require specific
5 tracking of cannabis plants.

6 M. As used in this section, "shortage of cannabis
7 supply in the medical cannabis program" means that the average
8 number of cannabis plants in production in the medical cannabis
9 program per qualified patient after the effective date of the
10 Cannabis Regulation Act is substantially less than the average
11 number of cannabis plants in production in the medical cannabis
12 program per qualified patient as of the effective date of the
13 Cannabis Regulation Act, where:

14 (1) the average number of cannabis plants in
15 production after the effective date of the Cannabis Regulation
16 Act is measured over a period of three consecutive months; and

17 (2) the average number of cannabis plants in
18 production as of the effective date of the Cannabis Regulation
19 Act is measured over a period of three consecutive months
20 immediately preceding the effective date of the Cannabis
21 Regulation Act.

22 N. A person who is a member of the New Mexico
23 senate or the New Mexico house of representatives on the
24 effective date of the Cannabis Regulation Act shall not apply
25 for or be granted a license to engage in any commercial

1 cannabis activity prior to July 1, 2026."

2 SECTION 19. Section 59A-15-4 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 259.1, as amended) is amended to read:

4 "59A-15-4. INSURANCE INDEPENDENTLY PROCURED--DUTY TO
5 ~~[REPORT]~~ FILE RETURNS.--

6 A. Each insured who in this state procures or
7 continues or renews insurance with a nonadmitted insurer on a
8 risk located or to be performed in whole or in part in this
9 state, other than insurance procured through a surplus lines
10 licensee pursuant to Chapter 59A, Article 14 NMSA 1978 shall
11 ~~[within ninety days after the date such insurance was so~~
12 ~~procured, continued or renewed, file a written report of the~~
13 ~~same with the superintendent, upon forms prescribed by the~~
14 ~~superintendent, showing the name and address of the insured or~~
15 ~~insureds, name and address of the insurer, the subject of the~~
16 ~~insurance, a general description of the coverage, the amount of~~
17 ~~premium currently charged therefor and such additional~~
18 ~~pertinent information as is reasonably requested by the~~
19 ~~superintendent]~~ file returns pursuant to the Insurance Premium
20 Tax Act.

21 B. If an independently procured policy covers risks
22 or exposures only partially located or to be performed in this
23 state, the taxes, fees and penalties imposed pursuant to the
24 Insurance Code and the Insurance Premium Tax Act shall be
25 computed on the portion of the premium properly attributable to

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1 the risks or exposures located or to be performed in this state
2 and reported to the secretary of taxation and revenue. In no
3 event, however, shall a tax be payable solely because the risk
4 in question, or any portion thereof, is located or to be
5 performed in this state.

6 C. This section does not abrogate or modify, and
7 shall not be construed or deemed to abrogate or modify, any
8 provision of the Insurance Code.

9 D. This section does not apply to life insurance,
10 health insurance or annuities."

11 SECTION 20. REPEAL CONFLICTING SECTION OF LAW.--Laws
12 2021, Chapter 65, Section 13 is repealed.

13 SECTION 21. REPEAL.--Sections 7-2-18.4, 7-2-18.5,
14 7-2-18.8, 7-2-18.21, 7-2-18.25, 7-2-18.27, 7-2-18.28, 7-2A-8.8,
15 7-2A-15, 7-2A-18, 7-2A-23, 7-2A-25, 7-2A-27, 7-2D-8.1, 7-9-16,
16 7-9-86, 7-9-105, 7-9-106, 7-9-114, 7-9G-2, 7-14A-9 and 66-4-3
17 NMSA 1978 (being Laws 1994, Chapter 115, Section 1; Laws 1998,
18 Chapter 97, Section 2; Laws 2001, Chapter 73, Section 1; Laws
19 2007, Chapter 204, Section 7; Laws 2009, Chapter 279, Section
20 1; Laws 2011, Chapter 89, Section 1; Laws 2012, Chapter 55,
21 Section 1; Laws 1998, Chapter 97, Section 3; Laws 1994, Chapter
22 115, Section 2; Laws 2001, Chapter 73, Section 2; Laws 2007,
23 Chapter 204, Section 8; Laws 2009, Chapter 279, Section 2; Laws
24 2012, Chapter 55, Section 2; Laws 1995, Chapter 89, Section 8;
25 Laws 1969, Chapter 144, Section 9; Laws 1995, Chapter 80,

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1 Section 1; Laws 2007, Chapter 45, Section 6; Laws 2018, Chapter
2 62, Section 1; Laws 2010, Chapter 77, Section 1 and Laws 2010,
3 Chapter 78, Section 1; Laws 2007, Chapter 229, Section 1; Laws
4 1991, Chapter 197, Section 13; and Laws 1978, Chapter 35,
5 Section 216, as amended) are repealed.

6 SECTION 22. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2023.

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