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SENATE BILL 158

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS TAX DEDUCTIONS FOR RECEIPTS FROM SALE OF FOOD AND PROVISION OF HEALTH PRACTITIONER SERVICES; CREATING NEW DISTRIBUTIONS TO CITIES AND COUNTIES; INCREASING THE RATE OF THE GROSS RECEIPTS TAX AND THE COMPENSATING TAX; MODIFYING THE COUNTY EQUALIZATION DISTRIBUTION.

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

Section 1. A new section of the Tax Administration Act is enacted to read:

" [NEW MATERIAL] DISTRIBUTION TO MUNICIPALITIES FROM GROSS RECEIPTS TAX-- OFFSET FOR FOOD DEDUCTION AND HEALTH PRACTITIONER SERVICES DEDUCTION. --

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a municipality in an amount, subject to

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1 any increase or decrease made pursuant to Section 7-1-6.15 NMSA
2 1978, equal to the sum of:

3 (1) the total deductions claimed pursuant to
4 Section 7-9-92 NMSA 1978 for the month by taxpayers from
5 business locations attributable to the municipality multiplied
6 by the sum of the combined rate of all municipal local option
7 gross receipts taxes in effect in the municipality for the
8 month plus one and two hundred twenty-five thousandths percent;
9 and

10 (2) the total deductions claimed pursuant to
11 Section 7-9-93 NMSA 1978 for the month by taxpayers from
12 business locations attributable to the municipality multiplied
13 by the sum of the combined rate of all municipal local option
14 gross receipts taxes in effect in the municipality for the
15 month plus one and two hundred twenty-five thousandths percent.

16 B. For the purposes of this section, "business
17 locations attributable to the municipality" means business
18 locations:

- 19 (1) within the municipality;
- 20 (2) on land owned by the state, commonly known
21 as the "state fair grounds", within the exterior boundaries of
22 the municipality;
- 23 (3) outside the boundaries of the municipality
24 on land owned by the municipality; and
- 25 (4) on an Indian reservation or pueblo grant

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1 in an area that is contiguous to the municipality and in which
2 the municipality performs services pursuant to a contract
3 between the municipality and the Indian tribe or Indian pueblo
4 if:

5 (a) the contract describes an area in
6 which the municipality is required to perform services and
7 requires the municipality to perform services that are
8 substantially the same as the services the municipality
9 performs for itself; and

10 (b) the governing body of the
11 municipality has submitted a copy of the contract to the
12 secretary. "

13 Section 2. A new section of the Tax Administration Act is
14 enacted to read:

15 "[NEW MATERIAL] DISTRIBUTION TO COUNTIES FROM GROSS
16 RECEIPTS TAX-- OFFSET FOR FOOD DEDUCTION AND HEALTH PRACTITIONER
17 SERVICES DEDUCTION.--A distribution pursuant to Section 7-1-6.1
18 NMSA 1978 shall be made to a county in an amount, subject to
19 any increase or decrease made pursuant to Section 7-1-6.15 NMSA
20 1978, equal to the sum of the following:

21 A. the total deductions claimed pursuant to Section
22 7-9-92 NMSA 1978 for the month by taxpayers from business
23 locations within a municipality in the county multiplied by the
24 combined rate of all county local option gross receipts taxes
25 in effect for the month that are imposed throughout the county;

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1 B. the total deductions claimed pursuant to Section
2 7-9-92 NMSA 1978 for the month by taxpayers from business
3 locations in the county but not within a municipality
4 multiplied by the combined rate of all county local option
5 gross receipts taxes in effect for the month that are imposed
6 in the county area not within a municipality;

7 C. the total deductions claimed pursuant to Section
8 7-9-93 NMSA 1978 for the month by taxpayers from business
9 locations within a municipality in the county multiplied by the
10 combined rate of all county local option gross receipts taxes
11 in effect for the month that are imposed throughout the county;
12 and

13 D. the total deductions claimed pursuant to Section
14 7-9-93 NMSA 1978 for the month by taxpayers from business
15 locations in the county but not within a municipality
16 multiplied by the combined rate of all county local option
17 gross receipts taxes in effect for the month that are imposed
18 in the county area not within a municipality. "

19 Section 3. A new section of the Tax Administration Act is
20 enacted to read:

21 " [NEW MATERIAL] PENALTY FOR OVERSTATING FOOD DEDUCTION OR
22 HEALTH PRACTITIONER SERVICES DEDUCTION. --A taxpayer who claims
23 a deduction pursuant to Section 7-9-92 or 7-9-93 NMSA 1978 and
24 overstates the amount of the deduction to which the taxpayer is
25 entitled shall pay a penalty in the amount of the difference

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1 between the overstated deduction amount and the correct
2 deduction amount multiplied by twice the total local option tax
3 rates in effect at the taxpayer's business location for which
4 the deduction was claimed. This penalty shall be in addition
5 to other applicable penalties. "

6 Section 4. Section 7-1-6.16 NMSA 1978 (being Laws 1983,
7 Chapter 213, Section 27, as amended) is amended to read:

8 "7-1-6.16. COUNTY EQUALIZATION DISTRIBUTION. --

9 A. Beginning on September 15, 1989 and on September
10 15 of each year thereafter, the department shall distribute to
11 any county that has imposed or continued in effect during the
12 state's preceding fiscal year a county gross receipts tax
13 pursuant to [~~the County Gross Receipts Tax Act~~] Section 7-20E-9
14 NMSA 1978 an amount equal to:

15 (1) the product of a fraction, the numerator
16 of which is the county's population and the denominator of
17 which is the state's population, multiplied by the annual sum
18 for the county; less

19 (2) the net receipts received by the
20 department during the report year, including any increase or
21 decrease made pursuant to Section 7-1-6.15 NMSA 1978,
22 attributable to the county gross receipts tax at a rate of one-
23 eighth percent. Provided that for any month in the report
24 year, if no county gross receipts tax was in effect in the
25 county in the previous month, the net receipts, for the

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1 purposes of this section, for that county for that month shall
2 be zero.

3 B. If the amount determined by the calculation in
4 Subsection A of this section is zero or a negative number for a
5 county, no distribution shall be made to that county.

6 C. As used in this section:

7 (1) "annual sum" means for each county the sum
8 of the monthly amounts for those months in the report year
9 which follow a month in which the county had in effect a county
10 gross receipts tax;

11 (2) "monthly amount" means an amount equal to
12 the product of:

13 (a) the net receipts received by the
14 department in the month attributable to the state gross
15 receipts tax ~~[multiplied by]~~ plus five and one-half percent of
16 the total amount of deductions claimed pursuant to Section
17 7-9-92 NMSA 1978 for the month plus five and one-half percent
18 of the total amount of deductions claimed pursuant to Section
19 7-9-93 NMSA 1978 for the month; and

20 (b) a fraction, the numerator of which
21 is one-eighth percent and the denominator of which is the tax
22 rate imposed by Section 7-9-4 NMSA 1978 in effect on the last
23 day of the previous month;

24 (3) "population" means the most recent
25 official census or estimate determined by the bureau of the

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1 census for the unit or, if neither is available, the most
2 current estimated population for the unit provided in writing
3 by the bureau of business and economic research at the
4 university of New Mexico; and

5 (4) "report year" means the twelve-month
6 period ending on the July 31 immediately preceding the date
7 upon which a distribution pursuant to this section is required
8 to be made. "

9 Section 5. Section 7-9-4 NMSA 1978 (being Laws 1966,
10 Chapter 47, Section 4, as amended) is amended to read:

11 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS
12 "GROSS RECEIPTS TAX".--

13 A. For the privilege of engaging in business, an
14 excise tax equal to five and one-half percent of gross receipts
15 is imposed on any person engaging in business in New Mexico.

16 B. The tax imposed by this section shall be
17 referred to as the "gross receipts tax". "

18 Section 6. Section 7-9-7 NMSA 1978 (being Laws 1966,
19 Chapter 47, Section 7, as amended) is amended to read:

20 "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
21 "COMPENSATING TAX".--

22 A. For the privilege of using tangible property in
23 New Mexico, there is imposed on the person using the property
24 an excise tax equal to five and one-half percent of the value
25 of tangible property that was:

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- (1) manufactured by the person using the property in the state;
- (2) acquired outside this state as the result of a transaction that would have been subject to the gross receipts tax had it occurred within this state; or
- (3) acquired as the result of a transaction which was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five and one-half percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction which was not initially subject to

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1 the gross receipts tax but which transaction, because of the
2 buyer's subsequent use of the services, should have been
3 subject to the gross receipts tax.

4 D. The tax imposed by this section shall be
5 referred to as the "compensating tax". "

6 Section 7. A new section of the Gross Receipts and
7 Compensating Tax Act, Section 7-9-92 NMSA 1978, is enacted to
8 read:

9 "7-9-92. [NEW MATERIAL] DEDUCTION-- GROSS RECEIPTS-- SALE
10 OF FOOD AT RETAIL FOOD STORE. --

11 A. Receipts from the sale of food at a retail food
12 store that are not exempt from gross receipts taxation and are
13 not deductible pursuant to another provision of the Gross
14 Receipts and Compensating Tax Act may be deducted from gross
15 receipts. The deduction provided by this section shall be
16 separately stated by the taxpayer.

17 B. For the purposes of this section:

18 (1) "food" means any food or food product for
19 home consumption that meets the definition of food in 7 USCA
20 2012(g) (1) for purposes of the federal food stamp program; and

21 (2) "retail food store" means an establishment
22 that sells food for home preparation and consumption and that
23 meets the definition of retail food store in 7 USCA 2012(k) (1)
24 for purposes of the federal food stamp program, whether or not
25 the establishment participates in the food stamp program. "

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1 Section 8. A new section of the Gross Receipts and
2 Compensating Tax Act, Section 7-9-93 NMSA 1978, is enacted to
3 read:

4 "7-9-93. [NEW MATERIAL] DEDUCTION-- GROSS RECEIPTS--
5 SERVICES OF HEALTH PRACTITIONER. --

6 A. Receipts from services provided by a licensed
7 health practitioner that are not otherwise deductible pursuant
8 to another provision of the Gross Receipts and Compensating Tax
9 Act may be deducted from gross receipts, provided that the
10 services are within the scope of practice of the person
11 providing the service. The deduction provided by this section
12 shall be separately stated by the taxpayer.

13 B. For the purposes of this section, "licensed
14 health practitioner" means:

15 (1) a chiropractic physician licensed pursuant
16 to the provisions of the Chiropractic Physician Practice Act;

17 (2) a dentist or dental hygienist licensed
18 pursuant to the provisions of the Dental Health Care Act;

19 (3) a physician or physician assistant
20 licensed pursuant to the provisions of Chapter 61, Article 6
21 NMSA 1978;

22 (4) an osteopathic physician licensed pursuant
23 to the provisions of Chapter 61, Article 10 NMSA 1978 or an
24 osteopathic physician's assistant licensed pursuant to the
25 provisions of the Osteopathic Physicians' Assistants Act;

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1 (5) a doctor of oriental medicine licensed
2 pursuant to the provisions of the Acupuncture and Oriental
3 Medicine Practice Act;

4 (6) a podiatrist licensed pursuant to the
5 provisions of the Podiatry Act;

6 (7) an optometrist licensed pursuant to the
7 provisions of the Optometry Act;

8 (8) a psychologist licensed pursuant to the
9 provisions of the Professional Psychologist Act;

10 (9) a registered nurse or licensed practical
11 nurse licensed pursuant to the provisions of the Nursing
12 Practice Act;

13 (10) a registered lay midwife registered by
14 the department of health;

15 (11) a physical therapist licensed pursuant to
16 the provisions of the Physical Therapy Act;

17 (12) a registered occupational therapist
18 licensed pursuant to the provisions of the Occupational Therapy
19 Act; and

20 (13) a respiratory care practitioner licensed
21 pursuant to the provisions of the Respiratory Care Act."

22 Section 9. EFFECTIVE DATE. --The effective date of the
23 provisions of Sections 3, 5, 6, 7 and 8 of this act is January
24 1, 2004. The effective date of the provisions of Sections 1, 2
25 and 4 of this act is February 1, 2004.

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