

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 189

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO TAXATION; IMPOSING A SURTAX ON CERTAIN RESTAURANT RECEIPTS; CREATING THE TOURISM PROMOTION FUND AND DISTRIBUTING REVENUE TO THE FUND; MAKING AN APPROPRIATION.

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]~~ DISTRIBUTIONS OF RESTAURANT SURTAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the tourism promotion fund in an amount equal to the net receipts attributable to the restaurant surtax."

Section 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"~~[NEW MATERIAL]~~ RESTAURANT SURTAX.--

A. The tax imposed by Section 7-9-4 NMSA 1978 is

.180962.4SA

underscoring material = new  
[bracketed material] = delete

underscoring material = new  
[bracketed material] = delete

1 increased by a surtax imposed at the rate of one-fourth percent  
2 on the gross receipts of a prepared food or alcoholic beverage  
3 retailer from the sale of prepared food and alcoholic  
4 beverages. The surtax imposed by this section may be referred  
5 to as the "restaurant surtax".

6 B. The restaurant surtax shall be administered by  
7 the department pursuant to the Tax Administration Act.

8 C. As used in this section:

9 (1) "alcoholic beverages" means distilled or  
10 rectified spirits, potable alcohol, brandy, whiskey, rum, gin,  
11 aromatic bitters or any similar beverage, including blended or  
12 fermented beverages, dilutions or mixtures of one or more of  
13 the foregoing containing more than one-half percent alcohol by  
14 volume, but "alcoholic beverages" does not include medicinal  
15 bitters;

16 (2) "prepared food or alcoholic beverage  
17 retailer" means an establishment that sells prepared food or  
18 alcoholic beverages, where meals are prepared and served  
19 primarily for on-premises consumption and that has a dining  
20 room, a kitchen and the employees necessary for preparing,  
21 cooking and serving meals. "Prepared food or alcoholic  
22 beverage retailer" includes an establishment, as defined in  
23 rules promulgated by the department, that serves only pizza,  
24 hamburgers, sandwiches, salads and other fast foods; and

25 (3) "prepared food" means food prepared for

.180962.4SA

underscored material = new  
[bracketed material] = delete

1 immediate consumption that is not subject to the deduction  
2 provided in Section 7-9-92 NMSA 1978."

3 Section 3. [NEW MATERIAL] TOURISM PROMOTION FUND  
4 CREATED--FUND ADMINISTRATION.--The "tourism promotion fund" is  
5 created in the state treasury. The fund consists of  
6 distributions of the restaurant surtax, income from investment  
7 of the fund, money appropriated to the fund, gifts, grants,  
8 fees, penalties, bequests or any other source. The tourism  
9 department shall administer the fund, and money in the fund is  
10 appropriated to the tourism department for advertising and the  
11 promotion of New Mexico tourism. Money in the fund shall not  
12 revert to the general fund at the end of a fiscal year.  
13 Disbursements from the fund shall be made only upon warrant  
14 drawn by the secretary of finance and administration pursuant  
15 to vouchers signed by the secretary of tourism.

16 Section 4. Section 7-1-2 NMSA 1978 (being Laws 1965,  
17 Chapter 248, Section 2, as amended) is amended to read:

18 "7-1-2. APPLICABILITY.--The Tax Administration Act  
19 applies to and governs:

20 A. the administration and enforcement of the  
21 following taxes, surtaxes or tax acts as they now exist or may  
22 hereafter be amended:

- 23 (1) Income Tax Act;
- 24 (2) Withholding Tax Act;
- 25 (3) Venture Capital Investment Act;

underscored material = new  
[bracketed material] = delete

- 1                   (4) Gross Receipts and Compensating Tax Act  
2 and any state gross receipts tax;
- 3                   (5) Liquor Excise Tax Act;
- 4                   (6) Local Liquor Excise Tax Act;
- 5                   (7) any municipal local option gross receipts  
6 tax;
- 7                   (8) any county local option gross receipts  
8 tax;
- 9                   (9) Special Fuels Supplier Tax Act;
- 10                  (10) Gasoline Tax Act;
- 11                  (11) petroleum products loading fee, which fee  
12 shall be considered a tax for the purpose of the Tax  
13 Administration Act;
- 14                  (12) Alternative Fuel Tax Act;
- 15                  (13) Cigarette Tax Act;
- 16                  (14) Estate Tax Act;
- 17                  (15) Railroad Car Company Tax Act;
- 18                  (16) Investment Credit Act, rural job tax  
19 credit, Laboratory Partnership with Small Business Tax Credit  
20 Act, Technology Jobs Tax Credit Act, film production tax  
21 credit, New Mexico filmmaker tax credit, Affordable Housing Tax  
22 Credit Act, high-wage jobs tax credit and Research and  
23 Development Small Business Tax Credit Act;
- 24                  (17) Corporate Income and Franchise Tax Act;
- 25                  (18) Uniform Division of Income for Tax

.180962.4SA

underscored material = new  
[bracketed material] = delete

1 Purposes Act;  
2 (19) Multistate Tax Compact;  
3 (20) Tobacco Products Tax Act; ~~[and]~~  
4 (21) the telecommunications relay service  
5 surcharge imposed by Section 63-9F-11 NMSA 1978, which  
6 surcharge shall be considered a tax for the purposes of the Tax  
7 Administration Act; and  
8 (22) the restaurant surtax;  
9 B. the administration and enforcement of the  
10 following taxes, surtaxes, advanced payments or tax acts as  
11 they now exist or may hereafter be amended:  
12 (1) Resources Excise Tax Act;  
13 (2) Severance Tax Act;  
14 (3) any severance surtax;  
15 (4) Oil and Gas Severance Tax Act;  
16 (5) Oil and Gas Conservation Tax Act;  
17 (6) Oil and Gas Emergency School Tax Act;  
18 (7) Oil and Gas Ad Valorem Production Tax Act;  
19 (8) Natural Gas Processors Tax Act;  
20 (9) Oil and Gas Production Equipment Ad  
21 Valorem Tax Act;  
22 (10) Copper Production Ad Valorem Tax Act;  
23 (11) any advance payment required to be made  
24 by any act specified in this subsection, which advance payment  
25 shall be considered a tax for the purposes of the Tax

.180962.4SA

underscored material = new  
[bracketed material] = delete

1 Administration Act;

2 (12) Enhanced Oil Recovery Act;

3 (13) Natural Gas and Crude Oil Production

4 Incentive Act; and

5 (14) intergovernmental production tax credit  
6 and intergovernmental production equipment tax credit;

7 C. the administration and enforcement of the  
8 following taxes, surcharges, fees or acts as they now exist or  
9 may hereafter be amended:

10 (1) Weight Distance Tax Act;

11 (2) the workers' compensation fee authorized  
12 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
13 tax for purposes of the Tax Administration Act;

14 (3) Uniform Unclaimed Property Act (1995);

15 (4) 911 emergency surcharge and the network  
16 and database surcharge, which surcharges shall be considered  
17 taxes for purposes of the Tax Administration Act;

18 (5) the solid waste assessment fee authorized  
19 by the Solid Waste Act, which fee shall be considered a tax for  
20 purposes of the Tax Administration Act;

21 (6) the water conservation fee imposed by  
22 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
23 for the purposes of the Tax Administration Act; and

24 (7) the gaming tax imposed pursuant to the  
25 Gaming Control Act; and

.180962.4SA

