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AN ACT

RELATING TO TAXATION; AMENDING THE DEFINITION OF "AVERAGE DISTRIBUTION OR TRANSFER AMOUNT" IN SECTION 7-1-6.15 NMSA 1978 (BEING LAWS 1983, CHAPTER 211, SECTION 20, AS AMENDED BY LAWS 2015, CHAPTER 89, SECTION 1 AND BY LAWS 2015, CHAPTER 100, SECTION 1).

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

SECTION 1. Section 7-1-6.15 NMSA 1978 (being Laws 1983, Chapter 211, Section 20, as amended by Laws 2015, Chapter 89, Section 1 and by Laws 2015, Chapter 100, Section 1) is amended to read:

"7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO MUNICIPALITIES OR COUNTIES.--

A. The provisions of this section apply to:

(1) any distribution to a municipality pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;

(2) any transfer to a municipality with respect to any local option gross receipts tax imposed by that municipality;

(3) any transfer to a county with respect to any local option gross receipts tax imposed by that county;

(4) any distribution to a county pursuant to Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

(5) any distribution to a municipality or a

1 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA
2 1978;

3 (6) any transfer to a county with respect to
4 any tax imposed in accordance with the Local Liquor Excise
5 Tax Act;

6 (7) any distribution to a county from the
7 county government road fund pursuant to Section 7-1-6.26 NMSA
8 1978;

9 (8) any distribution to a municipality of
10 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

11 (9) any distribution to a municipality of
12 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

13 B. Before making a distribution or transfer
14 specified in Subsection A of this section to a municipality
15 or county for the month, amounts comprising the net receipts
16 shall be segregated into two mutually exclusive categories.
17 One category shall be for amounts relating to the current
18 month, and the other category shall be for amounts relating
19 to prior periods. The total of each category for a
20 municipality or county shall be reported each month to that
21 municipality or county. If the total of the amounts relating
22 to prior periods is less than zero and its absolute value
23 exceeds the greater of one hundred dollars (\$100) or an
24 amount equal to twenty percent of the average distribution or
25 transfer amount for that municipality or county, then the

1 following procedures shall be carried out:

2 (1) all negative amounts relating to any
3 period prior to the three calendar years preceding the year
4 of the current month, net of any positive amounts in that
5 same time period for the same taxpayers to which the negative
6 amounts pertain, shall be excluded from the total relating to
7 prior periods. Except as provided in Paragraph (2) of this
8 subsection, the net receipts to be distributed or transferred
9 to the municipality or county shall be adjusted to equal the
10 amount for the current month plus the revised total for prior
11 periods; and

12 (2) if the revised total for prior periods
13 determined pursuant to Paragraph (1) of this subsection is
14 negative and its absolute value exceeds the greater of one
15 hundred dollars (\$100) or an amount equal to twenty percent
16 of the average distribution or transfer amount for that
17 municipality or county, the revised total for prior periods
18 shall be excluded from the distribution or transfers and the
19 net receipts to be distributed or transferred to the
20 municipality or county shall be equal to the amount for the
21 current month.

22 C. The department shall recover from a
23 municipality or county the amount excluded by Paragraph (2)
24 of Subsection B of this section. This amount may be referred
25 to as the "recoverable amount".

1 D. Prior to or concurrently with the distribution
2 or transfer to the municipality or county of the adjusted net
3 receipts, the department shall notify the municipality or
4 county whose distribution or transfer has been adjusted
5 pursuant to Paragraph (2) of Subsection B of this section:

6 (1) that the department has made such an
7 adjustment, that the department has determined that a
8 specified amount is recoverable from the municipality or
9 county and that the department intends to recover that amount
10 from future distributions or transfers to the municipality or
11 county;

12 (2) that the municipality or county has
13 ninety days from the date notice is made to enter into a
14 mutually agreeable repayment agreement with the department;

15 (3) that if the municipality or county takes
16 no action within the ninety-day period, the department will
17 recover the amount from the next six distributions or
18 transfers following the expiration of the ninety days; and

19 (4) that the municipality or county may
20 inspect, pursuant to Section 7-1-8.9 NMSA 1978, an
21 application for a claim for refund that gave rise to the
22 recoverable amount, exclusive of any amended returns that may
23 be attached to the application.

24 E. No earlier than ninety days from the date
25 notice pursuant to Subsection D of this section is given, the

1 department shall begin recovering the recoverable amount from
2 a municipality or county as follows:

3 (1) the department may collect the
4 recoverable amount by:

5 (a) decreasing distributions or
6 transfers to the municipality or county in accordance with a
7 repayment agreement entered into with the municipality or
8 county; or

9 (b) except as provided in Paragraphs
10 (2) and (3) of this subsection, if the municipality or county
11 fails to act within the ninety days, decreasing the amount of
12 the next six distributions or transfers to the municipality
13 or county following expiration of the ninety-day period in
14 increments as nearly equal as practicable and sufficient to
15 recover the amount;

16 (2) if, pursuant to Subsection B of this
17 section, the secretary determines that the recoverable amount
18 is more than fifty percent of the average distribution or
19 transfer of net receipts for that municipality or county, the
20 secretary:

21 (a) shall recover only up to fifty
22 percent of the average distribution or transfer of net
23 receipts for that municipality or county; and

24 (b) may, in the secretary's discretion,
25 waive recovery of any portion of the recoverable amount,

1 subject to approval by the state board of finance; and

2 (3) if, after application of a refund claim,
3 audit adjustment, correction of a mistake by the department
4 or other adjustment of a prior period, but prior to any
5 recovery of the department pursuant to this section, the
6 total net receipts of a municipality or county for the
7 twelve-month period beginning with the current month are
8 reduced or are projected to be reduced to less than fifty
9 percent of the average distribution or transfer of net
10 receipts, the secretary may waive recovery of any portion of
11 the recoverable amount, subject to approval by the state
12 board of finance.

13 F. No later than ninety days from the date notice
14 pursuant to Subsection D of this section is given, the
15 department shall provide the municipality or county adequate
16 opportunity to review an application for a claim for refund
17 that gave rise to the recoverable amount, exclusive of any
18 amended returns that may be attached to the application,
19 pursuant to Section 7-1-8.9 NMSA 1978.

20 G. On or before September 1 of each year beginning
21 in 2016, the secretary shall report to the state board of
22 finance and the legislative finance committee the total
23 recoverable amount waived pursuant to Subparagraph (b) of
24 Paragraph (2) and Paragraph (3) of Subsection E of this
25 section for each municipality and county in the prior fiscal

1 year.

2 H. The secretary is authorized to decrease a
3 distribution or transfer to a municipality or county upon
4 being directed to do so by the secretary of finance and
5 administration pursuant to the State Aid Intercept Act or to
6 redirect a distribution or transfer to the New Mexico finance
7 authority pursuant to an ordinance or a resolution passed by
8 the county or municipality and a written agreement of the
9 municipality or county and the New Mexico finance authority.
10 Upon direction to decrease a distribution or transfer or
11 notice to redirect a distribution or transfer to a
12 municipality or county, the secretary shall decrease or
13 redirect the next designated distribution or transfer, and
14 succeeding distributions or transfers as necessary, by the
15 amount of the state distributions intercept authorized by the
16 secretary of finance and administration pursuant to the State
17 Aid Intercept Act or by the amount of the state distribution
18 intercept authorized pursuant to an ordinance or a resolution
19 passed by the county or municipality and a written agreement
20 with the New Mexico finance authority. The secretary shall
21 transfer the state distributions intercept amount to the
22 municipal or county treasurer or other person designated by
23 the secretary of finance and administration or to the New
24 Mexico finance authority pursuant to written agreement to pay
25 the debt service to avoid default on qualified local revenue

1 bonds or meet other local revenue bond, loan or other debt
2 obligations of the municipality or county to the New Mexico
3 finance authority. A decrease to or redirection of a
4 distribution or transfer pursuant to this subsection that
5 arose:

6 (1) prior to an adjustment of a distribution
7 or transfer of net receipts creating a recoverable amount
8 owed to the department takes precedence over any collection
9 of any recoverable amount pursuant to Paragraph (2) of
10 Subsection B of this section, which may be made only from the
11 net amount of the distribution or transfer remaining after
12 application of the decrease or redirection pursuant to this
13 subsection; and

14 (2) after an adjustment of a distribution or
15 transfer of net receipts creating a recoverable amount owed
16 to the department shall be subordinate to any collection of
17 any recoverable amount pursuant to Paragraph (2) of
18 Subsection B of this section.

19 I. Upon the direction of the secretary of finance
20 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
21 secretary shall temporarily withhold the balance of a
22 distribution to a municipality or county, net of any decrease
23 or redirected amount pursuant to Subsection H of this section
24 and any recoverable amount pursuant to Paragraph (2) of
25 Subsection B of this section, that has failed to submit an

1 audit report required by the Audit Act or a financial report
2 required by Subsection F of Section 6-6-2 NMSA 1978. The
3 amount to be withheld, the source of the withheld
4 distribution and the number of months that the distribution
5 is to be withheld shall be as directed by the secretary of
6 finance and administration. A distribution withheld pursuant
7 to this subsection shall remain in the tax administration
8 suspense fund until distributed to the municipality or county
9 and shall not be distributed to the general fund. An amount
10 withheld pursuant to this subsection shall be distributed to
11 the municipality or county upon direction of the secretary of
12 finance and administration.

13 J. As used in this section:

14 (1) "amounts relating to the current month"
15 means any amounts included in the net receipts of the current
16 month that represent payment of tax due for the current
17 month, correction of amounts processed in the current month
18 that relate to the current month or that otherwise relate to
19 obligations due for the current month;

20 (2) "amounts relating to prior periods"
21 means any amounts processed during the current month that
22 adjust amounts processed in a period or periods prior to the
23 current month regardless of whether the adjustment is a
24 correction of a department error or due to the filing of
25 amended returns, payment of department-issued assessments,

1 filing or approval of claims for refund, audit adjustments or
2 other cause;

3 (3) "average distribution or transfer
4 amount" means the following amounts; provided that a
5 distribution or transfer that is negative shall not be used
6 in calculating the amounts:

7 (a) the average monthly amount
8 distributed or transferred to a municipality or county in the
9 thirty-six-month period preceding the current month;

10 (b) if a distribution or transfer to a
11 municipality or county has been made for less than three
12 years, the average monthly amount distributed or transferred
13 in the twelve-month period preceding the current month; or

14 (c) if a distribution or transfer to a
15 municipality or county has been made for less than twelve
16 months, the average monthly amount distributed or transferred
17 to the municipality or county in the months preceding the
18 current month;

19 (4) "current month" means the month for
20 which the distribution or transfer is being prepared; and

21 (5) "repayment agreement" means an agreement
22 between the department and a municipality or county under
23 which the municipality or county agrees to allow the
24 department to recover an amount determined pursuant to
25 Paragraph (2) of Subsection B of this section by decreasing

1 distributions or transfers to the municipality or county for
2 one or more months beginning with the distribution or
3 transfer to be made with respect to a designated month. No
4 interest shall be charged."

5 SECTION 2. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2019. _____

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