underscored material = new
[~~bracketed material~~] = delete
Amendments: new = →bold, blue, highlight←
delete = →~~bold, red, highlight, strikethrough~~←

HOUSE BILL 326

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

INTRODUCED BY

Jason C. Harper and Javier Martínez

**This document incorporates amendments that have been adopted during the current legislative session. The document is a tool to show the amendments in context and is not to be used for the purpose of amendments.**

AN ACT

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT TO DIRECT THE CREATION OF BUSINESS LOCATION CODES, PROVIDE BUSINESS LOCATION INSTRUCTIONS AND ALLOW OFFSETTING OF CERTAIN ERRONEOUSLY PAID COMPENSATING TAXES AGAINST GROSS RECEIPTS TAX DUE; SCORC→~~CLARIFYING~~←SCORC SCORC→AMENDING←SCORC THE DEFINITION OF "MANUFACTURING" IN THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT; AMENDING DEFINITIONS RELATED TO CONSTRUCTION SERVICES IN THE GROSS RECEIPTS AND COMPENSATING TAX ACT; REPEALING A CERTAIN DEDUCTION AND A CERTAIN CREDIT PURSUANT TO THAT ACT; SCORC→EXPANDING A GROSS RECEIPTS TAX

DEDUCTION FOR MARKETPLACE SELLERS TO ALLOW GOVERNMENTAL GROSS RECEIPTS TO BE DEDUCTED;←SCORC SFC→EXTENDING THE DATE OF A TAX CREDIT PROVIDED IN THE INVESTMENT CREDIT ACT; PROVIDING A TERMINATION DATE FOR THE CREDIT; INCLUDING A CALCULATION FOR THE CREDIT IF THE SALE OF QUALIFIED EQUIPMENT FOR WHICH THE CREDIT IS ALLOWED IS SUBJECT TO THE GROSS RECEIPTS TAX; INCLUDING A CALCULATION FOR THE CREDIT IF THE QUALIFIED EQUIPMENT IS NOT SUBJECT TO THE GROSS RECEIPTS TAX OR THE COMPENSATING TAX; PROVIDING THAT THE CREDIT WILL BE CLAIMED AGAINST A TAXPAYER'S STATE AND LOCAL TAX LIABILITIES;←SFC PROVIDING THAT INCREMENTS OF THE MUNICIPAL GROSS RECEIPTS TAX AND THE COUNTY GROSS RECEIPTS TAX SHALL BE IMPOSED IN INCREMENTS OF ONE-HUNDREDTHS PERCENT AND THAT ORDINANCES IMPOSING INCREMENTS OF CERTAIN LOCAL OPTION GROSS RECEIPTS TAXES REPEALED BY LAWS 2019, CHAPTER 274, SECTION 16 ARE IMPOSING INCREMENTS OF THE MUNICIPAL GROSS RECEIPTS TAX AND THE COUNTY GROSS RECEIPTS TAX.

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

**SECTION 1.** Section 7-1-14 NMSA 1978 (being Laws 1969, Chapter 145, Section 1, as amended) is repealed and a new Section 7-1-14 NMSA 1978 is enacted to read:

"7-1-14. [NEW MATERIAL] BUSINESS LOCATION INSTRUCTIONS FOR PURPOSES OF REPORTING GROSS RECEIPTS AND USE--LOCATION-CODE DATABASE AND LOCATION-RATE DATABASE.--

A. For purposes of the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts or compensating tax, a person that has gross receipts and a person using property or services in New Mexico in a taxable manner shall report the gross receipts to the proper business location as provided in this section.

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

C. The business location for gross receipts from the sale or license of tangible personal property, and any related deductions, shall be at the following locations:

(1) if the property is received by the purchaser at the New Mexico business location of the seller, the location of the seller;

(2) if the property is not received by the purchaser at a business location of the seller, the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the seller;

(3) if Paragraphs (1) and (2) of this subsection do not apply, the location indicated by an address for the purchaser available from the business records of the

seller that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith;

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

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

D. The business location for gross receipts from the lease of tangible personal property, including vehicles, other transportation equipment and other mobile tangible personal property, and any related deductions, shall be the location of primary use of the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business; provided that use of this address does not constitute bad faith. The primary business location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

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

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

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

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

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

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

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

G. Except as provided in Subsection H of this

section, uses of property or services subject to the compensating tax shall be reported at the business location at which gross receipts would have been required to be reported had the transaction been subject to the gross receipts tax.

H. If a person subject to the compensating tax can demonstrate that the first use upon which compensating tax is imposed occurred at a time and place different from the time and place of the purchase, then compensating tax shall be reported at the business location of the first use.

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

J. The secretary shall develop a location-code database that provides the business location codes designated pursuant to Subsection I of this section. The secretary shall also develop and provide to taxpayers a location-rate database that sets out the tax rates applicable to business locations within the state, by address, and sellers who properly rely on this database shall not be liable for any additional tax due to the use of an incorrect rate.

K. As used in this section:

(1) "business location" means the code designated by the department to identify business locations and required to be used to report the gross receipts, or use for

purchases subject to the compensating tax, and deductions related to those receipts or that use;

(2) "gross receipts" means, as applicable, "gross receipts" as used in the Gross Receipts and Compensating Tax Act and the Leased Vehicle Gross Receipts Tax Act and "interstate telecommunications gross receipts" in the Interstate Telecommunications Gross Receipts Tax Act;

(3) "in-person service" means a service physically provided in person by the service provider, where the customer or the customer's real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed; and

(4) "professional service" means a service, other than an in-person service, that requires either an advanced degree from an accredited post-secondary educational institution or a license from the state to perform."

**SECTION 2.** Section 7-1-29 NMSA 1978 (being Laws 1965, Chapter 248, Section 31, as amended) is amended to read:

"7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

A. In response to a claim for refund, credit or rebate made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize payment to a person in the amount of the credit or rebate claimed or refund an

overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A payment of a credit rebate claimed or a refund of tax and interest erroneously paid amounting to twenty thousand dollars ($20,000) or more shall be made with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA 1978 and the Cigarette Tax Act without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not successfully taken, adjudging that a person has properly claimed a credit or rebate or made an overpayment of tax, the secretary shall authorize the payment to the person of the amount thereof.

C. In the discretion of the secretary, any amount of credit or rebate to be paid or tax to be refunded may be offset against any amount of tax for which the person due to receive the credit, rebate payment or refund is liable. The

secretary or the secretary's delegate shall give notice to the taxpayer that the credit, rebate payment or refund will be made in this manner, and the taxpayer shall be entitled to interest pursuant to Section 7-1-68 NMSA 1978 until the tax liability is credited with the credit, rebate or refund amount.

D. In an audit by the department or a managed audit covering multiple reporting periods in which both underpayments and overpayments of a tax have been made in different reporting periods, the department shall credit the tax overpayments against the underpayments; provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was credited against an underpayment, whichever is later. If the overpayments credited pursuant to this section exceed the underpayments of a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. When a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities pursuant to the tax acts to which

the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later.

F. If the department determines, upon review of an original or amended income tax return, corporate income and franchise tax return, estate tax return, special fuels excise tax return or oil and gas tax return, that there has been an overpayment of tax for the taxable period to which the return or amended return relates in excess of the amount due to be refunded to the taxpayer pursuant to the provisions of Subsection K of Section 7-1-26 NMSA 1978, the department may refund that excess amount to the taxpayer without requiring the taxpayer to file a refund claim.

G. Records of refunds and credits made in excess of ten thousand dollars ($10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund or credit.

H. In response to a timely refund claim pursuant to Section 7-1-26 NMSA 1978 and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may refund or credit a portion of an

assessment of tax paid, including applicable penalties and interest representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction; provided that the requirements of equitable recoupment are met. For purposes of this subsection, the refund claim may be filed by the taxpayer to whom the assessment was issued or by another person who claims to have previously paid the tax on behalf of the taxpayer. Prior to granting the refund or credit, the secretary may require a waiver of all rights to claim a refund or credit of the tax previously paid by another person paying a tax on behalf of the taxpayer.

I. If, as a result of an audit by the department or a managed audit, a person is determined to owe gross receipts tax on receipts from the sale of property or services, the department may credit against the amount owed an amount of compensating tax paid by the purchaser if the person can demonstrate that the purchaser timely paid the compensating tax on the same property or services. The credit provided by this subsection shall not be denied solely because the purchaser cannot timely file for a refund of the compensating tax paid and, if the credit is to be granted, the department shall require, for the purpose of granting the credit, that the purchaser give up any right to claim a refund of that tax."

**SECTION 3.** Section 7-4-10 NMSA 1978 (being Laws 1993,

Chapter 153, Section 1, as amended) is amended to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

A. Except as provided in Subsections B and C of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. If eighty percent or more of the New Mexico numerators of the property and payroll factors for a filing group, or for a taxpayer that is not a member of a filing group, are employed in manufacturing or operating a computer processing facility, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor for the taxable year.

C. If a filing group, or a taxpayer that is not a member of a filing group, has a headquarters operation in New Mexico, the filing group or the taxpayer may elect to have business income apportioned to this state by multiplying the income by the sales factor for the taxable year.

D. To elect the method of apportionment provided by Subsection B or C of this section, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election

shall apply as follows:

(1) if the election is made for taxable years beginning prior to January 1, 2020, to the taxable year in which the election is made and to each taxable year thereafter for three years, or until the taxable year ending prior to January 1, 2020, whichever is earlier;

(2) if the election is made for a taxable year beginning on or after January 1, 2020, to the taxable year in which the election is made and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by Subsection B or C of this section has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months; and

(3) if the election is made by a qualifying filing group, the election shall apply to the members of the filing group properly included pursuant to Section 7-2A-8.3 NMSA 1978.

E. For purposes of this section:

(1) "filing group" means "filing group" as that term is defined in the Corporate Income and Franchise Tax Act;

(2) "headquarters operation" means:

(a) the center of operations of a business: 1) where corporate staff employees are physically employed; 2) where the centralized functions are primarily performed, including administrative, planning, managerial, human resources, purchasing, information technology and accounting, but not including operating a call center; 3) the function and purpose of which is to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; 4) from which final authority over regional or subregional offices, operating facilities and any other offices of the business are issued; and 5) including national and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters; or

(b) the center of operations of a business: 1) the function and purpose of which is to manage and direct most aspects of one or more centralized functions; and 2) from which final authority over one or more centralized functions is issued;

(3) "manufacturing" means [~~operating a computer processing facility or~~] combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(a) construction;

(b) farming;

(c) [~~electric~~] power generation SCORC→~~,~~ ~~except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act;~~←SCORC SCORC→**; provided that for taxable years beginning prior to January 1, 2024, "manufacturing" includes electricity generation at a facility that does not require location approval and a certificate of convenience and necessity prior to commencing construction or operation of the facility pursuant to the Public Utility Act;**←SCORC

(d) processing natural resources, including hydrocarbons; or

(e) processing or preparation of meals for immediate consumption; and

(4) "operating a computer processing facility" means managing the necessary and ancillary activities for the operation of a facility primarily used to process data or information, but does not include managing the operation of facilities that are predominantly used to support sales of tangible property or the provision of banking, financial or professional services."

**SECTION 4.** Section 7-9-3.4 NMSA 1978 (being Laws 2003, Chapter 272, Section 5) is amended to read:

"7-9-3.4. DEFINITIONS--CONSTRUCTION, [~~AND~~] CONSTRUCTION MATERIALS AND CONSTRUCTION-RELATED SERVICES.--As used in the Gross Receipts and Compensating Tax Act:

A. "construction" means:

(1) the building, altering, repairing or demolishing in the ordinary course of business any:

(a) road, highway, bridge, parking area or related project;

(b) building, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining

appurtenance;

(l) microwave station or similar facility;

(m) retaining wall, wall, fence, gate or similar structure; or

(n) similar work;

(2) the leveling or clearing of land;

(3) the excavating of earth;

(4) the drilling of wells of any type, including seismograph shot holes or core drilling; or

(5) similar work; [~~and~~]

B. "construction material" means tangible personal property that becomes or is intended to become an ingredient or component part of a construction project, but "construction material" does not include a replacement fixture when the replacement is not construction or a replacement part for a fixture; and

C. "construction-related service" means a service directly contracted for or billed to a specific construction project, including design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and services required to comply with governmental construction-related rules. "Construction-related service" does not include general business services, such as legal or accounting services, equipment maintenance or real estate sales

commissions."

**SECTION 5.** Section 7-9-52 NMSA 1978 (being Laws 1969, Chapter 144, Section 42, as amended) is amended to read:

"7-9-52. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CONSTRUCTION SERVICES AND CONSTRUCTION-RELATED SERVICES TO PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS.--

A. Receipts from selling a construction service or a construction-related service may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person performing the construction service or a construction-related service.

B. The buyer delivering the nontaxable transaction certificate shall have the construction services or construction-related services directly contracted for or billed to:

(1) a construction project that is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part;

(2) a construction project that is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed; or

(3) a construction project that is located on the tribal territory of an Indian nation, tribe or pueblo.

~~[C. As used in this section, "construction-related service" means a service directly contracted for or billed to a specific construction project, including design, architecture, drafting, surveying, engineering, environmental and structural testing, security, sanitation and services required to comply with governmental construction-related regulations; but "construction-related service" excludes general business services such as legal or accounting services, equipment maintenance and real estate sales commissions.~~]"

SCORC→SECTION 6. Section 7-9-117 NMSA 1978 (being Laws 2019, Chapter 270, Section 36) is amended to read:

"7-9-117. DEDUCTION--GROSS RECEIPTS--GOVERNMENTAL GROSS RECEIPTS--MARKETPLACE SELLER.--

A. A marketplace seller may deduct receipts for sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are facilitated by a marketplace provider from gross receipts and governmental gross receipts; provided that the marketplace seller obtains documentation from the marketplace provider indicating that the marketplace provider is registered with the department and has remitted or will remit the taxes due on the gross receipts from those transactions.

B. The deduction provided by this section shall not apply if the marketplace provider is determined not to owe the

tax due to the marketplace provider's reliance on information provided by the seller as determined pursuant to Subsection C of Section 7-9-5 NMSA 1978."←SCORC

SFC→SECTION 7. Section 7-9A-5 NMSA 1978 (being Laws 1979, Chapter 347, Section 5, as amended by Laws 1991, Chapter 159, Section 4 and also by Laws 1991, Chapter 162, Section 4) is amended to read:

"7-9A-5. INVESTMENT CREDIT--AMOUNT--CLAIMANT.--

A. The investment credit provided for in the Investment Credit Act [~~is an~~] may be claimed by a taxpayer carrying on a manufacturing operation in New Mexico in an amount equal to [~~the percent of~~]:

(1) the product of the sum of the compensating tax rate [~~provided for in the Gross Receipts and Compensating Tax Act applied to~~] and, beginning July 1, 2021, any municipal or county compensating tax rate multiplied by the value of the qualified equipment [~~and may be claimed by the taxpayer carrying on a manufacturing operation in New Mexico~~]; or

(2) if the sale is subject to the gross receipts tax, the product of the sum of the gross receipts tax rate and, beginning July 1, 2021, any municipal or county local option gross receipts tax rates multiplied by the seller's gross receipts from the sale of the qualified equipment.

B. If the purchase or the introduction into New

Mexico of the qualified equipment is not subject to the gross receipts tax or compensating tax, the rate to determine the amount of the credit shall be equal to a rate of five and one-eighth percent."

SECTION 8. Section 7-9A-7 NMSA 1978 (being Laws 1979, Chapter 347, Section 7, as amended) is amended to read:

"7-9A-7. VALUE OF QUALIFIED EQUIPMENT.--[~~A.~~] Prior to July 1, [~~2020~~] 2030, the value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

[~~B. After June 30, 2020, the value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico; provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars ($2,000,000).~~]"

SECTION 9. Section 7-9A-7.1 NMSA 1978 (being Laws 1983, Chapter 206, Section 6, as amended) is amended to read:

"7-9A-7.1. EMPLOYMENT REQUIREMENTS.--

A. Prior to July 1, [~~2020~~] 2030, to be eligible to claim a credit pursuant to the Investment Credit Act, the

taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) [~~five hundred thousand dollars ($500,000)~~] seven hundred fifty thousand dollars ($750,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars ($30,000,000); and

(2) one million dollars ($1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars ($30,000,000) claimed by the taxpayer in a taxable year in the same claim.

[~~B. After June 30, 2020, for every one hundred thousand dollars ($100,000) in value of qualified equipment claimed by a taxpayer in a taxable year, the taxpayer shall employ the equivalent of one full-time employee in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for credit.~~

~~C.~~] B. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on

which the taxpayer applies for the credit, if the employee was only being trained prior to that date or the employee's employment was necessitated by the use of the qualified equipment."

SECTION 10. Section 7-9A-8 NMSA 1978 (being Laws 1979, Chapter 347, Section 8, as amended) is amended to read:

"7-9A-8. CLAIMING THE CREDIT FOR CERTAIN TAXES.--

A. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the qualified equipment for the manufacturing operation is purchased or introduced into New Mexico.

B. A taxpayer having applied for and been granted approval for a credit by the department pursuant to the Investment Credit Act may claim an amount of available credit against the taxpayer's [~~compensating tax, gross receipts tax or withholding tax due to the state of New Mexico~~] tax liabilities; provided that the credit shall be claimed against the taxpayer's tax liabilities pursuant to the Gross Receipts and Compensating Tax Act, the Municipal Local Option Gross Receipts and Compensating Taxes Act and the County Local Option Gross Receipts and Compensating Taxes Act before being claimed against the taxpayer's tax liabilities pursuant to the Withholding Tax Act; provided further that no taxpayer may claim, except as provided in Subsection C of this section, an

underscored material = new
[~~bracketed material~~] = delete
Amendments: new = bold, blue, highlight
delete = bold, red, highlight, strikethrough

amount of available credit for any reporting period that exceeds eighty-five percent of the sum of the taxpayer's [~~gross receipts tax, compensating tax and withholding~~] tax [~~due~~] liabilities for that reporting period. Any amount of available credit not claimed against the taxpayer's [~~gross receipts tax, compensating tax or withholding~~] tax [~~due~~] liabilities for a reporting period may be claimed in subsequent reporting periods.

C. A taxpayer may apply by September 30 of the current calendar year for a refund of the unclaimed balance of the available credit up to a maximum of two hundred fifty thousand dollars ($250,000) if on January 1 of the current calendar year:

(1) the taxpayer's available credit is less than five hundred thousand dollars ($500,000); and

(2) the sum of the taxpayer's [~~gross receipts tax, compensating tax and withholding~~] tax [~~due~~] liabilities for the previous calendar year was less than thirty-five percent of the taxpayer's available credit but more than ten thousand dollars ($10,000).

D. As used in this section, "tax liabilities" means any tax liability a taxpayer incurs pursuant to the Withholding Tax Act, the Gross Receipts and Compensating Tax Act, the Municipal Local Option Gross Receipts and Compensating Taxes

Act or the County Local Option Gross Receipts and Compensating Taxes Act."←SFC

SECTION SCORC→6.←SCORC SFC→~~SCORC→7.←SCORC~~←SFC SFC→11.←SFC Section 7-19D-9 NMSA 1978 (being Laws 1978, Chapter 151, Section 1, as amended) is amended to read:

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

A. The majority of the members of the governing body of any municipality may impose by ordinance an excise tax on the gross receipts of any person engaging in business in the municipality for the privilege of engaging in business in the municipality. A tax imposed pursuant to this section shall be imposed by the enactment of one or more ordinances enacting any number of increments of one-hundredth percent; provided that the total increments do not exceed the maximum rate provided in Subsection C of this section; and provided further that, if at the time of enacting the ordinance the total municipal gross receipts tax rate is not an even multiple of one-hundredth percent, the municipality may impose an increment in an amount sufficient to bring the total rate to an even multiple of one-hundredth percent. The governing body of a municipality may, at the time of enacting the ordinance, dedicate the revenue for any municipal purpose. If the governing body proposes to dedicate such revenue, the ordinance and, if any election is held, the ballot shall clearly state the purpose to which the

revenue will be dedicated, and any revenue so dedicated shall be used by the municipality for that purpose unless a subsequent ordinance is adopted to change the purpose to which dedicated or to place the revenue in the general fund of the municipality.

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

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

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

(2) the remaining increments, [~~totaling~~] up to a total of forty-five hundredths percent, shall not go into effect until after an election is held and a majority of the voters in the municipality voting in the election votes in favor of the tax. Increments approved by voters prior to [~~the effective date of this 2019 act~~] July 1, 2019 shall be included in the increments approved by the voters, as provided in this paragraph.

D. An election shall be called on the questions of disapproval or approval of any ordinance enacted pursuant to

Subsection C of this section or any ordinance amending such ordinance:

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

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

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

(b) in all other municipalities, with the municipal clerk within thirty days after the adoption of such ordinance and the petition has been signed by a number of registered voters in the municipality equal to at least five percent of the number of the voters in the municipality who were registered to vote in the most recent regular municipal election.

E. The signatures on the petition filed in accordance with Subsection D of this section shall be verified

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

F. If at an election called pursuant to Subsection D of this section a majority of the registered voters voting on the question approves the ordinance imposing the tax, the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts and Compensating Taxes Act. If at such an election a majority of the registered voters voting on the question disapproves the ordinance, the ordinance imposing the tax shall be deemed repealed and the question of imposing any increment of the municipal gross receipts tax authorized in this section shall

not be considered again by the governing body for a period of one year from the date of the election.

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

**SECTION SCORC→~~7.~~←SCORC SFC→~~SCORC→8.←SCORC~~←SFC SFC→12.←SFC** Section 7-20E-9 NMSA 1978 (being Laws 1983, Chapter 213, Section 30, as amended) is amended to read:

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

A. A majority of the members of the governing body of a county may impose by ordinance an excise tax on the gross receipts of a person engaging in business in the county or the county area. A tax imposed pursuant to this section shall be imposed by the enactment of one or more ordinances enacting any number of increments of one-hundredth percent; provided that the total increments do not exceed the maximum rate provided in Subsections C and D of this section; and provided further that,

if at the time of enacting the ordinance the total county gross receipts tax rate is not an even multiple of one-hundredth percent, the county may impose an increment in an amount sufficient to bring the total rate to an even multiple of one-hundredth percent. The governing body may, at the time of enacting the ordinance, dedicate the revenue for any county purpose.

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

C. The maximum rate of the county gross receipts tax that may be imposed on the gross receipts of any person engaging in business in a county shall not exceed one and twenty-five hundredths percent. Of that one and twenty-five hundredths percent:

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

(2) the remaining increments, up to a total of twenty-five hundredths percent, shall not go into effect until after an election is held and a majority of the voters in the county voting in the election votes in favor of the tax. Increments approved by voters prior to [~~the effective date of this 2019 act~~] July 1, 2019 shall be included in the increments approved by the voters, as provided in this paragraph.

D. In addition to the maximum rate that may be

imposed on the gross receipts of any person engaging in business in a county, the maximum rate of the county gross receipts tax that may be imposed on the gross receipts of any person engaging in business in a county area shall not exceed one-half percent. Of that one-half percent:

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

(2) the remaining increments, [~~totaling~~] up to a total of thirty-eight hundredths percent, shall not go into effect until after an election is held and a majority of the voters in the county area voting in the election votes in favor of the tax. Increments approved by voters prior to [~~the effective date of this 2019 act~~] July 1, 2019 shall be included in the increments approved by the voters, as provided in this paragraph.

E. A class A county with a county hospital operated and maintained pursuant to a lease or operating agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico shall provide not less than one million dollars ($1,000,000) in funds, and that amount shall be dedicated to the support of indigent patients who are residents of that county. Funds for indigent care shall be made available each month of each year the tax is in effect in an amount not less than eighty-three thousand three hundred

thirty-three dollars thirty-three cents ($83,333.33). The interest from the investment of county funds for indigent care may be used for other assistance to indigent persons, not to exceed twenty thousand dollars ($20,000) for all other assistance in any year.

F. A county, except a class A county with a county hospital operated and maintained pursuant to a lease or operating agreement with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, shall be required to dedicate revenue produced by the imposition of a one-eighth percent gross receipts tax increment for the support of indigent patients who are residents of that county. A county that imposed up to two one-eighth percent increments on January 1, 1996 for support of indigent patients in the county or, after January 1, 1996, imposes a one-eighth percent increment and dedicates one-half of that increment for county indigent patient purposes shall deposit the revenue dedicated for county indigent purposes that is transferred to the county in the county health care assistance fund, and such revenues shall be expended pursuant to the Indigent Hospital and County Health Care Act."

**SECTION SCORC→8.←SCORC SFC→~~SCORC→9.←SCORC~~←SFC SFC→13.←SFC** TEMPORARY PROVISION--ORDINANCES IMPOSING CERTAIN REPEALED LOCAL OPTION GROSS RECEIPTS TAXES DEEMED TO BE IMPOSING AN EQUAL RATE OF THE MUNICIPAL OR COUNTY GROSS

RECEIPTS TAX.--An ordinance imposing a local option gross receipts tax authorized by those sections of law that were repealed and consolidated with the municipal gross receipts tax or the county gross receipts tax by Laws 2019, Chapter 274 is deemed to be imposing an equal rate of the municipal gross receipts tax or county gross receipts tax, as appropriate, as was imposed by the ordinance when the ordinance was enacted; provided that the ordinance was in effect on the date of repeal and the ordinance has not been repealed by the governing body. Any dedication of revenue pursuant to the ordinance remains in effect until changed by the governing body; provided that, if the dedication were approved by the electorate, any change to the dedication must also be approved by the electorate.

**SECTION SCORC→9.←SCORC SFC→~~SCORC→10.←SCORC~~←SFC SFC→14.←SFC** REPEAL.--Sections 7-9-57.1 and 7-9-96 NMSA 1978 (being Laws 1998, Chapter 92, Section 3 and Laws 2005, Chapter 104, Section 26) are repealed effective July 1, 2020.

**SECTION SCORC→~~10.~~←SCORC SFC→~~SCORC→11.←SCORC~~←SFC SFC→15.←SFC** REPEAL.--Laws 2019, Chapter 270, Section 11 is repealed.

**SFC→~~SECTION SCORC→11.←SCORC SCORC→12.←SCORC APPLICABILITY.--The provisions of Section 3 of this act apply to taxable years beginning on and after January 1, 2020.~~**

**~~SECTION SCORC→12.←SCORC SCORC→13.←SCORC EFFECTIVE DATE.--The effective date of the provisions of Sections 1, 2, 4~~**

~~through SCORC→7 and 10←SCORC SCORC→SCORC→8 and 11←SCORC←SCORC SFC→7 and 10←SFC of this act is July 1, 2021.~~←SFC

SFC→SECTION 16. APPLICABILITY.--

A. The provisions of Section 3 of this act apply to taxable years beginning on and after January 1, 2020.

B. The provisions of Section 9 of this act apply to qualified equipment purchased or introduced to the state on and after July 1, 2020.

SECTION 17. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1, 2, 4 and 15 of this act is July 1, 2021.

B. The effective date of the provisions of Sections 6 through 12 of this act is July 1, 2020.←SFC





underscored material = new
[~~bracketed material~~] = delete
Amendments: new = →bold, blue, highlight←
delete = →~~bold, red, highlight, strikethrough~~←