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HOUSE BILL 2

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2017**

INTRODUCED BY

Jim R. Trujillo and Carl Trujillo and Brian Egolf

AN ACT

RELATING TO TAXATION; DISTRIBUTING REVENUE IN EXCESS OF A FIVE-YEAR AVERAGE OF THE OIL AND GAS EMERGENCY SCHOOL TAX TO THE TAX STABILIZATION RESERVE; ELIMINATING THE TAXPAYERS DIVIDEND FUND; SUSPENDING A DISTRIBUTION TO THE LEGISLATIVE RETIREMENT FUND FOR TWO YEARS, THEN SENDING THE DISTRIBUTION TO THE MAGISTRATE RETIREMENT FUND AND THE JUDICIAL RETIREMENT FUND FOR THREE YEARS, THEN RESUMING THE DISTRIBUTION TO THE LEGISLATIVE RETIREMENT FUND; DISTRIBUTING A PORTION OF THE GROSS RECEIPTS TAX TO THE COUNTY-SUPPORTED MEDICAID FUND; PROVIDING THAT THE PLACE OF BUSINESS OF A PERSON WITHOUT PHYSICAL PRESENCE IN THIS STATE IS WHERE THE PROPERTY OR SERVICE BEING SOLD IS DELIVERED; ALLOWING A REFUND OF GROSS RECEIPTS TAX DUE A PERSON TO BE APPLIED AGAINST COMPENSATING TAX OWED BY THE PERSON'S CUSTOMER AS A RESULT OF TRANSACTIONS WITH THAT PERSON; CLARIFYING THAT A PERSON WITHOUT PHYSICAL PRESENCE IN THE STATE THAT HAS LESS

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1 THAN ONE HUNDRED THOUSAND DOLLARS (\$100,000) IN GROSS RECEIPTS  
2 IS NOT ENGAGING IN BUSINESS PURSUANT TO THE GROSS RECEIPTS AND  
3 COMPENSATING TAX ACT; BARRING THE TAXATION AND REVENUE  
4 DEPARTMENT FROM ENFORCING COLLECTION OF THE GROSS RECEIPTS TAX  
5 IN CERTAIN CIRCUMSTANCES; IMPOSING THE STATE GROSS RECEIPTS TAX  
6 ON NONPROFIT HOSPITALS; IMPOSING THE GOVERNMENTAL GROSS  
7 RECEIPTS TAX ON GOVERNMENT HOSPITALS; DISTRIBUTING THE REVENUE  
8 ATTRIBUTABLE TO TAXING ALL HOSPITALS TO THE GENERAL FUND;  
9 ADJUSTING CERTAIN DEDUCTIONS AND EXEMPTIONS FROM GROSS RECEIPTS  
10 AND GOVERNMENTAL GROSS RECEIPTS FOR HOSPITALS; REQUIRING  
11 SEPARATE REPORTING FOR CERTAIN DEDUCTIONS FROM GROSS RECEIPTS;  
12 AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978;  
13 MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

16 SECTION 1. Section 6-4-4 NMSA 1978 (being Laws 1987,  
17 Chapter 347, Section 4, as amended) is amended to read:

18 "6-4-4. RESERVATION OF EXCESS GENERAL FUND REVENUES  
19 [~~APPROPRIATION TO TAXPAYERS DIVIDEND FUND~~].--For the seventy-  
20 seventh and subsequent fiscal years, if the revenues of the  
21 general fund exceed the total of appropriations from the  
22 general fund, the excess revenue shall be transferred to the  
23 operating reserve; provided that if the sum of the excess  
24 revenue plus the balance in the operating reserve prior to the  
25 transfer is greater than eight percent of the aggregate

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1 recurring appropriations from the general fund for the previous  
2 fiscal year, then an amount equal to the smaller of either the  
3 amount of the excess revenue or the difference between the sum  
4 and eight percent of the aggregate recurring appropriations  
5 from the general fund for the previous fiscal year shall be  
6 transferred to the tax stabilization reserve [~~provided further~~  
7 ~~that if the total of the amount transferred to the tax~~  
8 ~~stabilization reserve pursuant to the provisions of this~~  
9 ~~section plus the balance in that reserve prior to the transfer~~  
10 ~~is greater than six percent of the aggregate recurring~~  
11 ~~appropriations from the general fund for the previous fiscal~~  
12 ~~year, then an amount equal to the smaller of either the amount~~  
13 ~~transferred or the difference between the total and six percent~~  
14 ~~of the aggregate recurring appropriation from the general fund~~  
15 ~~for the previous fiscal year is appropriated to the taxpayers~~  
16 ~~dividend fund]."~~

17 SECTION 2. Section 7-1-6.20 NMSA 1978 (being Laws 1985,  
18 Chapter 65, Section 6, as amended) is amended to read:

19 "7-1-6.20. IDENTIFICATION OF MONEY IN EXTRACTION TAXES  
20 SUSPENSE FUND--DISTRIBUTION.--

21 A. Except as provided in Subsection B of this  
22 section, after the necessary disbursements have been made from  
23 the extraction taxes suspense fund, the money remaining in the  
24 suspense fund as of the last day of the month shall be  
25 identified by tax source and distributed or transferred in

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1 accordance with the provisions of Sections 7-1-6.21 through  
2 7-1-6.23 NMSA 1978 and Section 3 of this 2017 act. After the  
3 necessary distributions and transfers, any balance, except for  
4 remittances unidentified as to source or disposition, shall be  
5 transferred to the general fund.

6 B. Payments on assessments issued by the department  
7 pursuant to the Oil and Gas Conservation Tax Act, the Oil and  
8 Gas Emergency School Tax Act, the Oil and Gas Ad Valorem  
9 Production Tax Act and the Oil and Gas Severance Tax Act shall  
10 be held in the extraction taxes suspense fund until the  
11 secretary determines that there is no substantial risk of  
12 protest or other litigation, whereupon after the necessary  
13 disbursements have been made from the extraction taxes suspense  
14 fund, the money remaining in the suspense fund as of the last  
15 day of the month attributed to these payments shall be  
16 identified by tax source and distributed or transferred in  
17 accordance with the provisions of Sections 7-1-6.21 through  
18 7-1-6.23 NMSA 1978 and Section 3 of this 2017 act. After the  
19 necessary distributions and transfers, any balance, except for  
20 remittance unidentified as to source or disposition, shall be  
21 transferred to the general fund."

22 SECTION 3. A new section of the Tax Administration Act is  
23 enacted to read:

24 "[NEW MATERIAL] DISTRIBUTION--TAX STABILIZATION RESERVE  
25 FROM THE OIL AND GAS EMERGENCY SCHOOL TAX.--

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1           A. A distribution pursuant to Section 7-1-6.20 NMSA  
2 1978 shall be made to the tax stabilization reserve in an  
3 amount as calculated pursuant to Subsection B of this section.

4           B. If the year-to-date amount plus the current net  
5 receipts exceeds the annual average amount, the excess shall be  
6 distributed to the tax stabilization reserve. If there is not  
7 an excess amount, no distribution shall be made to the tax  
8 stabilization reserve. Each month the department shall make  
9 the calculation to determine if an excess amount should be  
10 distributed.

11           C. As used in this section:

12                   (1) "annual average amount" means the total  
13 net receipts attributable to the tax imposed pursuant to  
14 Section 7-31-4 NMSA 1978 and distributed pursuant to Section  
15 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal  
16 years, divided by five; and

17                   (2) "year-to-date amount" means the cumulative  
18 year-to-date net receipts attributable to the tax imposed  
19 pursuant to Section 7-31-4 NMSA 1978 and distributed to the  
20 general fund in the prior months of the current fiscal year."

21           SECTION 4. Section 7-1-6.4 NMSA 1978 (being Laws 1983,  
22 Chapter 211, Section 9, as amended) is amended to read:

23                   "7-1-6.4. DISTRIBUTION--MUNICIPALITY FROM GROSS RECEIPTS  
24 TAX.--

25           A. Except as provided in Subsection B of this

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1 section, a distribution pursuant to Section 7-1-6.1 NMSA 1978  
2 shall be made to each municipality in an amount, subject to any  
3 increase or decrease made pursuant to Section 7-1-6.15 NMSA  
4 1978, equal to the product of the quotient of one and two  
5 hundred twenty-five thousandths percent divided by the tax rate  
6 imposed by Section 7-9-4 NMSA 1978 multiplied by the net  
7 receipts, except receipts attributable to a nonprofit hospital  
8 licensed by the department of health, for the month

9 attributable to the gross receipts tax from business locations:

10 (1) within that municipality;

11 (2) on land owned by the state, commonly known  
12 as the "state fairgrounds", within the exterior boundaries of  
13 that municipality;

14 (3) outside the boundaries of any municipality  
15 on land owned by that municipality; and

16 (4) on an Indian reservation or pueblo grant  
17 in an area that is contiguous to that municipality and in which  
18 the municipality performs services pursuant to a contract  
19 between the municipality and the Indian tribe or Indian pueblo  
20 if:

21 (a) the contract describes an area in  
22 which the municipality is required to perform services and  
23 requires the municipality to perform services that are  
24 substantially the same as the services the municipality  
25 performs for itself; and

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

B. If the reduction made by Laws 1991, Chapter 9, Section 9 to the distribution under this section impairs the ability of a municipality to meet its principal or interest payment obligations for revenue bonds outstanding prior to July 1, 1991 that are secured by the pledge of all or part of the municipality's revenue from the distribution made under this section, then the amount distributed pursuant to this section to that municipality shall be increased by an amount sufficient to meet any required payment, provided that the distribution amount does not exceed the amount that would have been due that municipality under this section as it was in effect on June 30, 1992.

C. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act."

SECTION 5. Section 7-1-6.38 NMSA 1978 (being Laws 1994, Chapter 145, Section 1, as amended) is amended to read:

"7-1-6.38. DISTRIBUTION--GOVERNMENTAL GROSS RECEIPTS TAX.--

A. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 shall be made in amounts equal to the following  
2 percentages of the net receipts attributable to the  
3 governmental gross receipts tax, less the net receipts  
4 attributable to a hospital licensed by the department of  
5 health:

6 (1) seventy-five percent to the public project  
7 revolving fund administered by the New Mexico finance  
8 authority; [~~in an amount equal to seventy-five percent of the~~  
9 ~~net receipts attributable to the governmental gross receipts~~  
10 ~~tax.~~

11 ~~B. A distribution pursuant to Section 7-1-6.1 NMSA~~  
12 ~~1978 shall be made]~~

13 (2) twenty-four percent to the energy,  
14 minerals and natural resources department [~~in an amount equal~~  
15 ~~to twenty-four percent of the net receipts attributable to the~~  
16 ~~governmental gross receipts tax]; provided that forty-one and  
17 two-thirds percent of the distribution is appropriated to the  
18 energy, minerals and natural resources department to implement  
19 the provisions of the New Mexico Youth Conservation Corps Act  
20 and fifty-eight and one-third percent of the distribution is  
21 appropriated to the energy, minerals and natural resources  
22 department for state park and recreation area capital  
23 improvements, including the costs of planning, engineering,  
24 design, construction, renovation, repair, equipment and  
25 furnishings; and~~

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1                   ~~[G. A distribution pursuant to Section 7-1-6.1 NMSA~~  
2 ~~1978 shall be made]~~

3                   (3) one percent to the ~~[office of]~~ cultural  
4 affairs ~~[in an amount equal to one percent of the net receipts~~  
5 ~~attributable to the governmental gross receipts tax]~~ department  
6 for capital improvements at state museums and monuments  
7 administered by the ~~[office of]~~ cultural affairs department.

8                   ~~[D.]~~ B. The state pledges to and agrees with the  
9 holders of any bonds or notes issued by the New Mexico finance  
10 authority or by the energy, minerals and natural resources  
11 department and payable from the net receipts attributable to  
12 the governmental gross receipts tax distributed to the New  
13 Mexico finance authority or the energy, minerals and natural  
14 resources department pursuant to this section that the state  
15 will not limit, reduce or alter the distribution of the net  
16 receipts attributable to the governmental gross receipts tax to  
17 the New Mexico finance authority or the energy, minerals and  
18 natural resources department or limit, reduce or alter the rate  
19 of imposition of the governmental gross receipts tax until the  
20 bonds or notes together with the interest thereon are fully met  
21 and discharged. The New Mexico finance authority and the  
22 energy, minerals and natural resources department are  
23 authorized to include this pledge and agreement of the state in  
24 any agreement with the holders of the bonds or notes."

25                   **SECTION 6.** Section 7-1-6.43 NMSA 1978 (being Laws 2003,  
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1 Chapter 86, Section 1, as amended) is amended to read:

2 "7-1-6.43. DISTRIBUTION--~~[F]~~ JUDICIAL RETIREMENT FUND  
3 AND MAGISTRATE RETIREMENT FUND--LEGISLATIVE RETIREMENT FUND.--

4 A. A distribution pursuant to Section 7-1-6.1 NMSA  
5 1978 from the net receipts attributable to the amount of tax  
6 deducted pursuant to the Oil and Gas Proceeds and Pass-Through  
7 Entity Withholding Tax Act shall be made:

8 (1) beginning July 1, 2019 and prior to July  
9 1, 2022, to the:

10 (a) judicial retirement fund, in the  
11 amount of fifty-five thousand one hundred twenty-five dollars  
12 (\$55,125); and

13 (b) magistrate retirement fund, in the  
14 amount of nineteen thousand eight hundred seventy-five dollars  
15 (\$19,875); and

16 (2) on and after July 1, 2022, to the  
17 legislative retirement fund in ~~[an]~~ the amount equal to  
18 seventy-five thousand dollars (\$75,000) or, if larger, in an  
19 amount equal to one-twelfth of the amount necessary to pay out  
20 the retirement benefits due under state legislator member  
21 coverage plan 2 and Paragraph (2) of Subsection C of Section  
22 10-11-41 NMSA 1978 for the succeeding calendar year.

23 B. In regard to the distribution to the legislative  
24 retirement fund, in December ~~[2003]~~ 2021 and in each December  
25 thereafter, the public employees retirement association, with

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1 the assistance of the legislative council service, shall  
2 determine the amount of [~~those~~] retirement benefits for the  
3 succeeding calendar year. If the monthly average exceeds  
4 seventy-five thousand dollars (\$75,000), the association shall  
5 [~~notify~~] immediately notify the department of the average  
6 amount. [~~That average amount shall be the amount distributed~~  
7 ~~pursuant to Subsection A of this section as of the end of each~~  
8 ~~month of the twelve consecutive months beginning with the~~  
9 ~~December in which the determination was made.]"~~

10 SECTION 7. Section 7-1-14 NMSA 1978 (being Laws 1969,  
11 Chapter 145, Section 1, as amended) is amended to read:

12 "7-1-14. SECRETARY MAY DETERMINE WHERE CERTAIN GROSS  
13 RECEIPTS ARE TO BE REPORTED--PLACE OF BUSINESS FOR CONSTRUCTION  
14 PROJECTS, [~~AND~~] CERTAIN REAL PROPERTY SALES AND SALES OF OUT-  
15 OF-STATE VENDORS.--

16 A. By regulation, the secretary may require any  
17 person maintaining one or more places of business to report the  
18 person's taxable gross receipts and deductions for each  
19 municipality or county or area within an Indian reservation or  
20 pueblo grant in which the person maintains a place of business.

21 B. For persons engaged in the construction  
22 business, the place where the construction project is performed  
23 is a "place of business", and all receipts from that project  
24 are to be reported from that place of business.

25 C. The secretary may, by regulation, also require

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1 any person maintaining a business outside the boundaries of a  
2 municipality on land owned by that municipality to report the  
3 person's taxable gross receipts for that municipality.

4 D. For a person engaged in the business of selling  
5 real estate, the location of the real property sold is the  
6 "place of business", and all receipts from that sale are to be  
7 reported from that place of business.

8 E. For a person engaging in business but is without  
9 physical presence in this state, "place of business" is the  
10 location where the property or the product of a service being  
11 sold by the person is delivered."

12 SECTION 8. Section 7-1-29 NMSA 1978 (being Laws 1965,  
13 Chapter 248, Section 31, as amended) is amended to read:

14 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

15 A. In response to a claim for refund, credit or  
16 rebate made as provided in Section 7-1-26 NMSA 1978, but before  
17 a court acquires jurisdiction of the matter, the secretary or  
18 the secretary's delegate may authorize payment to a person in  
19 the amount of the credit or rebate claimed or refund an  
20 overpayment of tax determined by the secretary or the  
21 secretary's delegate to have been erroneously made by the  
22 person, together with allowable interest. A payment of a  
23 credit rebate claimed or a refund of tax and interest  
24 erroneously paid amounting to twenty thousand dollars (\$20,000)  
25 or more shall be made with the prior approval of the attorney

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1 general, except that the secretary or the secretary's delegate  
2 may make refunds with respect to the Oil and Gas Severance Tax  
3 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas  
4 Emergency School Tax Act, the Oil and Gas Ad Valorem Production  
5 Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas  
6 Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA  
7 1978 and the Cigarette Tax Act without the prior approval of  
8 the attorney general regardless of the amount.

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

16 C. In the discretion of the secretary, any amount  
17 of credit or rebate to be paid or tax to be refunded may be  
18 offset against any amount of tax for which the person due to  
19 receive the credit, rebate payment or refund is liable, or in  
20 the case of a refund of gross receipts tax, any compensating  
21 tax owed by that person's customer as a result of transactions  
22 with that person. The secretary or the secretary's delegate  
23 shall give notice to the taxpayer that the credit, rebate  
24 payment or refund will be made in this manner, and the taxpayer  
25 shall be entitled to interest pursuant to Section 7-1-68 NMSA

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1 1978 until the tax liability is credited with the credit,  
2 rebate or refund amount.

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

18 E. When a taxpayer makes a payment identified to a  
19 particular return or assessment, and the department determines  
20 that the payment exceeds the amount due pursuant to that return  
21 or assessment, the secretary may apply the excess to the  
22 taxpayer's other liabilities pursuant to the tax acts to which  
23 the return or assessment applies, without requiring the  
24 taxpayer to file a claim for a refund. The liability to which  
25 an overpayment is applied pursuant to this section shall be

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1 deemed paid in the period in which the overpayment was made or  
2 the period to which the overpayment was applied, whichever is  
3 later.

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

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

19 H. In response to a timely refund claim pursuant to  
20 Section 7-1-26 NMSA 1978 and notwithstanding any other  
21 provision of the Tax Administration Act, the secretary or the  
22 secretary's delegate may refund or credit a portion of an  
23 assessment of tax paid, including applicable penalties and  
24 interest representing the amount of tax previously paid by  
25 another person on behalf of the taxpayer on the same

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1 transaction, provided that the requirements of equitable  
2 recoupment are met. For purposes of this subsection, the  
3 refund claim may be filed by the taxpayer to whom the  
4 assessment was issued or by another person who claims to have  
5 previously paid the tax on behalf of the taxpayer. Prior to  
6 granting the refund or credit, the secretary may require a  
7 waiver of all rights to claim a refund or credit of the tax  
8 previously paid by another person paying a tax on behalf of the  
9 taxpayer."

10 SECTION 9. A new section of the Tax Administration Act is  
11 enacted to read:

12 "[NEW MATERIAL] DISTRIBUTION--GROSS RECEIPTS TAX TO  
13 COUNTY-SUPPORTED MEDICAID FUND.--A distribution pursuant to  
14 Section 7-1-6.1 NMSA 1978 of the net receipts attributable to  
15 the gross receipts tax shall be made to the county-supported  
16 medicaid fund in the amount of two million two hundred thousand  
17 dollars (\$2,200,000)."

18 SECTION 10. Section 7-9-3.3 NMSA 1978 (being Laws 2003,  
19 Chapter 272, Section 4) is amended to read:

20 "7-9-3.3. DEFINITION--ENGAGING IN BUSINESS.--As used in  
21 the Gross Receipts and Compensating Tax Act, "engaging in  
22 business" means carrying on or causing to be carried on any  
23 activity with the purpose of direct or indirect benefit,  
24 without regard to having physical presence, including the  
25 presence of a representative acting on behalf of the person, in

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1 the state, except that "engaging in business" does not include:

2 A. [~~"engaging in business" does not include~~] having  
3 a worldwide [~~web site~~] website as a third-party content  
4 provider on a computer physically located in New Mexico but  
5 owned by another nonaffiliated person; [~~and~~]

6 B. [~~"engaging in business" does not include~~] using  
7 a nonaffiliated third-party call center to accept and process  
8 telephone or electronic orders of tangible personal property or  
9 licenses primarily from non-New Mexico buyers, which orders are  
10 forwarded to a location outside New Mexico for filling, or to  
11 provide services primarily to non-New Mexico customers; and

12 C. the activities of a person without physical  
13 presence in this state if the person and the person's  
14 affiliates have less than one hundred thousand dollars  
15 (\$100,000) of gross receipts in the state, based on receipts  
16 during the prior calendar year. As used in this subsection,  
17 "affiliate" means a business entity that, directly or  
18 indirectly, through one or more intermediaries, controls, is  
19 controlled by or is under common control with another business  
20 entity."

21 SECTION 11. Section 7-9-3.5 NMSA 1978 (being Laws 2003,  
22 Chapter 272, Section 3, as amended) is amended to read:

23 "7-9-3.5. DEFINITION--GROSS RECEIPTS.--

24 A. As used in the Gross Receipts and Compensating  
25 Tax Act:

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1 (1) "gross receipts" means the total amount of  
2 money or the value of other consideration received from selling  
3 property in New Mexico, from leasing or licensing property  
4 employed in New Mexico, from granting a right to use a  
5 franchise employed in New Mexico, from selling services  
6 performed outside New Mexico, the product of which is initially  
7 used in New Mexico, or from performing services in New Mexico.  
8 In an exchange in which the money or other consideration  
9 received does not represent the value of the property or  
10 service exchanged, "gross receipts" means the reasonable value  
11 of the property or service exchanged;

12 (2) "gross receipts" includes:

13 (a) any receipts from sales of tangible  
14 personal property handled on consignment, including third-party  
15 sales made over a multi-vendor marketplace platform that acts  
16 as the intermediary, typically as the processor of the  
17 transaction, between the seller and the purchaser;

18 (b) the total commissions or fees  
19 derived from the business of buying, selling or promoting the  
20 purchase, sale or lease, as an agent or broker on a commission  
21 or fee basis, of any property, service, stock, bond or  
22 security;

23 (c) amounts paid by members of any  
24 cooperative association or similar organization for sales or  
25 leases of personal property or performance of services by such

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1 organization;

2 (d) amounts received from transmitting  
3 messages or conversations by persons providing telephone or  
4 telegraph services;

5 (e) amounts received by a New Mexico  
6 florist from the sale of flowers, plants or other products that  
7 are customarily sold by florists where the sale is made  
8 pursuant to orders placed with the New Mexico florist that are  
9 filled and delivered outside New Mexico by an out-of-state  
10 florist; and

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

23 (3) "gross receipts" excludes:

24 (a) cash discounts allowed and taken;

25 (b) New Mexico gross receipts tax,

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1 governmental gross receipts tax and leased vehicle gross  
2 receipts tax payable on transactions for the reporting period;

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

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

15 (e) any type of time-price differential;

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

18 (g) amounts received by a New Mexico  
19 florist from the sale of flowers, plants or other products that  
20 are customarily sold by florists where the sale is made  
21 pursuant to orders placed with an out-of-state florist for  
22 filling and delivery in New Mexico by a New Mexico florist.

23 B. When the sale of property or service is made  
24 under any type of charge, conditional or time-sales contract or  
25 the leasing of property is made under a leasing contract, the

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1 seller or lessor may elect to treat all receipts, excluding any  
2 type of time-price differential, under such contracts as gross  
3 receipts as and when the payments are actually received. If  
4 the seller or lessor transfers the seller's or lessor's  
5 interest in any such contract to a third person, the seller or  
6 lessor shall pay the gross receipts tax upon the full sale or  
7 leasing contract amount, excluding any type of time-price  
8 differential."

9 SECTION 12. Section 7-9-4.3 NMSA 1978 (being Laws 1991,  
10 Chapter 8, Section 2, as amended by Laws 1993, Chapter 332,  
11 Section 1 and by Laws 1993, Chapter 352, Section 1) is amended  
12 to read:

13 "7-9-4.3. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
14 "GOVERNMENTAL GROSS RECEIPTS TAX".--For the privilege of  
15 engaging in certain activities by governments, there is imposed  
16 on every agency, institution, instrumentality or political  
17 subdivision of the state, except any school district [~~and any~~  
18 ~~entity licensed by the department of health that is principally~~  
19 ~~engaged in providing health care services~~], an excise tax of  
20 five percent of governmental gross receipts. The tax imposed  
21 by this section shall be referred to as the "governmental gross  
22 receipts tax".

23 SECTION 13. Section 7-9-7.1 NMSA 1978 (being Laws 1993,  
24 Chapter 45, Section 1, as amended) is amended to read:

25 "7-9-7.1. DEPARTMENT BARRED FROM TAKING COLLECTION

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1 ACTIONS WITH RESPECT TO CERTAIN COMPENSATING TAX LIABILITIES.--

2 A. The department shall take no action to enforce  
3 collection of compensating tax due on purchases made by an  
4 individual if:

5 (1) the property is used only for nonbusiness  
6 purposes;

7 (2) the property is not a manufactured home;  
8 and

9 (3) the individual is not an agent for  
10 collection of compensating tax pursuant to Section 7-9-10 NMSA  
11 1978.

12 B. The department shall take no action to enforce  
13 collection of gross receipts tax for a tax period prior to the  
14 effective date of this 2017 act on persons engaging in business  
15 if, for those tax periods, those persons:

16 (1) lacked physical presence in the state; and

17 (2) did not report taxable gross receipts.

18 [~~B.~~] C. The prohibition in Subsection A of this  
19 section does not prevent the department from enforcing  
20 collection of compensating tax on purchases from persons who  
21 are not individuals, who are agents for collection pursuant to  
22 Section 7-9-10 NMSA 1978 or who use the property in the course  
23 of engaging in business in New Mexico or from enforcing  
24 collection of compensating tax due on purchase of manufactured  
25 homes."

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1           SECTION 14. Section 7-9-12 NMSA 1978 (being Laws 1969,  
2 Chapter 144, Section 5, as amended) is amended to read:

3           "7-9-12. EXEMPTIONS.--~~[Exempted from the gross receipts~~  
4 ~~or compensating tax are those receipts or uses exempted in~~  
5 ~~Sections 7-9-13 through 7-9-42 NMSA 1978.]~~ Exemptions from  
6 either the gross receipts tax or the compensating tax are not  
7 exemptions from both taxes unless explicitly stated otherwise  
8 by law."

9           SECTION 15. Section 7-9-29 NMSA 1978 (being Laws 1970,  
10 Chapter 12, Section 3, as amended) is amended to read:

11           "7-9-29. EXEMPTION--GROSS RECEIPTS TAX--CERTAIN  
12 ORGANIZATIONS.--

13           A. Exempted from the gross receipts tax are the  
14 receipts of organizations that demonstrate to the department  
15 that they have been granted exemption from the federal income  
16 tax by the United States commissioner of internal revenue as  
17 organizations described in Section 501(c)(3) of the United  
18 States Internal Revenue Code of [~~1954~~] 1986, as that section  
19 may be amended or renumbered, except receipts as provided in  
20 Subsection B of this section.

21           B. Exempted from any local option gross receipts  
22 tax, but not the state gross receipts tax, are receipts of an  
23 organization that is a hospital licensed by the department of  
24 health that demonstrates to the department that it has been  
25 granted exemption from the federal income tax by the United

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1 States commissioner of internal revenue as organizations  
2 described in Section 501(c)(3) of the United States Internal  
3 Revenue Code of 1986, as that section may be amended or  
4 renumbered.

5 [B.] C. Exempted from the gross receipts tax are  
6 the receipts from carrying on chamber of commerce, visitor  
7 bureau and convention bureau functions of organizations that  
8 demonstrate to the department that they have been granted  
9 exemption from the federal income tax by the United States  
10 commissioner of internal revenue as organizations described in  
11 Section 501(c)(6) of the United States Internal Revenue Code of  
12 [1954] 1986, as that section may be amended or renumbered.

13 [G.] D. This section does not apply to receipts  
14 derived from an unrelated trade or business as defined in  
15 Section 513 of the United States Internal Revenue Code of  
16 [1954] 1986, as that section may be amended or renumbered."

17 SECTION 16. Section 7-9-45 NMSA 1978 (being Laws 1969,  
18 Chapter 144, Section 35, as amended) is amended to read:

19 "7-9-45. DEDUCTIONS.--

20 A. [~~In computing the gross receipts tax or~~  
21 ~~governmental gross receipts tax due, only those receipts~~  
22 ~~specified in Sections 7-9-46 through 7-9-76.2, 7-9-77.1,~~  
23 ~~7-9-83, 7-9-85 through 7-9-87 and 7-9-89 NMSA 1978 may be~~  
24 ~~deducted. Receipts, whether specified once or several times in~~  
25 ~~those sections, may be deducted only once from gross receipts~~



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1 ~~or governmental gross~~ Receipts may only be deducted once from  
2 gross receipts or governmental gross receipts when computing  
3 the gross receipts tax or governmental gross receipts tax due.

4 B. The same receipts [~~that are exempted from the~~  
5 ~~gross receipts tax may~~] shall not be both exempt from the gross  
6 receipts tax and deducted from gross receipts. [~~Receipts that~~  
7 ~~are deducted from gross receipts may not be exempted from the~~  
8 ~~gross receipts tax.~~]

9 C. The same receipts [~~that are exempted from the~~  
10 ~~governmental gross receipts tax~~] shall not be both exempt from  
11 the governmental gross receipts tax and deducted from  
12 governmental gross receipts. [~~Receipts that are deducted from~~  
13 ~~governmental gross receipts shall not be exempted from the~~  
14 ~~governmental gross receipts tax.~~]"

15 SECTION 17. Section 7-9-48 NMSA 1978 (being Laws 1969,  
16 Chapter 144, Section 38, as amended) is amended to read:

17 "7-9-48. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL  
18 GROSS RECEIPTS--SALE OF A SERVICE FOR RESALE.--

19 A. Receipts from selling a service for resale may  
20 be deducted from gross receipts or from governmental gross  
21 receipts if the sale is made to a person who delivers a  
22 nontaxable transaction certificate to the seller. The buyer  
23 delivering the nontaxable transaction certificate must resell  
24 the service in the ordinary course of business and the resale  
25 must be subject to the gross receipts tax or governmental gross

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1 receipts tax.

2 B. A taxpayer allowed a deduction pursuant to this  
3 section shall report the amount deducted separately in a manner  
4 required by the department."

5 SECTION 18. Section 7-9-54.3 NMSA 1978 (being Laws 2002,  
6 Chapter 37, Section 8, as amended by Laws 2010, Chapter 77,  
7 Section 2 and by Laws 2010, Chapter 78, Section 2) is amended  
8 to read:

9 "7-9-54.3. DEDUCTION--GROSS RECEIPTS TAX--WIND AND SOLAR  
10 GENERATION EQUIPMENT--SALES TO GOVERNMENTS.--

11 A. Receipts from selling wind generation equipment  
12 or solar generation equipment to a government for the purpose  
13 of installing a wind or solar electric generation facility may  
14 be deducted from gross receipts.

15 B. The deduction allowed pursuant to this section  
16 shall not be claimed for receipts from an expenditure for which  
17 a taxpayer claims a credit pursuant to Section 7-2-18.25 or  
18 7-2A-25 [~~or 7-9G-2~~] NMSA 1978.

19 C. A taxpayer allowed a deduction pursuant to this  
20 section shall report the amount deducted separately in a manner  
21 required by the department.

22 [~~G-~~] D. As used in this section:

23 (1) "government" means the United States or  
24 the state or a governmental unit or a subdivision, agency,  
25 department or instrumentality of the federal government or the

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1 state;

2 (2) "related equipment" means transformers,  
3 circuit breakers and switching and metering equipment used to  
4 connect a wind or solar electric generation plant to the  
5 electric grid;

6 (3) "solar generation equipment" means solar  
7 thermal energy collection, concentration and heat transfer and  
8 conversion equipment; solar tracking hardware and software;  
9 photovoltaic panels and inverters; support structures; turbines  
10 and associated electrical generating equipment used to generate  
11 electricity from solar thermal energy; and related equipment;  
12 and

13 (4) "wind generation equipment" means wind  
14 generation turbines, blades, nacelles, rotors and supporting  
15 structures used to generate electricity from wind and related  
16 equipment."

17 SECTION 19. Section 7-9-73.1 NMSA 1978 (being Laws 1991,  
18 Chapter 8, Section 3, as amended) is amended to read:

19 "7-9-73.1. DEDUCTION--GROSS RECEIPTS--HOSPITALS.--[Fifty]

20 A. Prior to July 1, 2018, sixty percent, and on and  
21 after July 1, 2018, sixty-five percent of the receipts of  
22 hospitals licensed by the department of health may be deducted  
23 from gross receipts; provided that this deduction may be  
24 applied only to the taxable gross receipts remaining after all  
25 other appropriate deductions have been taken.

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1           B. Prior to July 1, 2018, sixty percent, and on and  
2 after July 1, 2018, sixty-five percent of the receipts of a  
3 hospital licensed by the department of health may be deducted  
4 from governmental gross receipts; provided that this deduction  
5 may be applied only to the taxable governmental gross receipts  
6 remaining after all other appropriate deductions have been  
7 taken.

8           C. A taxpayer allowed a deduction pursuant to this  
9 section shall report the amount deducted separately in a manner  
10 required by the department."

11           SECTION 20. Section 7-9-73.2 NMSA 1978 (being Laws 1998,  
12 Chapter 95, Section 2 and Laws 1998, Chapter 99, Section 4, as  
13 amended) is amended to read:

14           "7-9-73.2. DEDUCTION--GROSS RECEIPTS TAX AND GOVERNMENTAL  
15 GROSS RECEIPTS TAX--PRESCRIPTION DRUGS--OXYGEN.--

16           A. Receipts from the sale of prescription drugs and  
17 oxygen and oxygen services provided by a licensed medicare  
18 durable medical equipment provider may be deducted from gross  
19 receipts and governmental gross receipts.

20           B. A taxpayer allowed a deduction pursuant to this  
21 section shall report the amount deducted separately in a manner  
22 required by the department.

23           [~~B.~~] C. For the purposes of this section,  
24 "prescription drugs" means insulin and substances that are:

25           (1) dispensed by or under the supervision of a

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1 licensed pharmacist or by a physician or other person  
2 authorized under state law to do so;

3 (2) prescribed for a specified person by a  
4 person authorized under state law to prescribe the substance;  
5 and

6 (3) subject to the restrictions on sale  
7 contained in Subparagraph 1 of Subsection (b) of 21 USCA 353."

8 SECTION 21. Section 7-9-75 NMSA 1978 (being Laws 1972,  
9 Chapter 39, Section 2) is amended to read:

10 "7-9-75. DEDUCTION--GROSS RECEIPTS TAX--SALE OF CERTAIN  
11 SERVICES PERFORMED DIRECTLY ON PRODUCT MANUFACTURED.--

12 A. Receipts from selling the service of combining  
13 or processing components or materials may be deducted from  
14 gross receipts if the sale is made to a person engaged in the  
15 business of manufacturing who delivers a nontaxable transaction  
16 certificate to the seller. The buyer delivering the nontaxable  
17 transaction certificate must have the service performed  
18 directly upon tangible personal property [~~which he~~] that the  
19 buyer is in the business of manufacturing or upon ingredients  
20 or component parts thereof.

21 B. A taxpayer allowed a deduction pursuant to this  
22 section shall report the amount deducted separately in a manner  
23 required by the department."

24 SECTION 22. TEMPORARY PROVISION--TAXATION AND REVENUE  
25 DEPARTMENT REPORT TO LEGISLATURE--HEALTH CARE INDUSTRY REVENUE

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1 AND TAX EXPENDITURES.--The taxation and revenue department  
2 shall evaluate health-care-industry-related revenue collections  
3 and tax expenditures and shall, by December 1, 2017, report to  
4 the legislative finance committee and the revenue stabilization  
5 and tax policy committee the result of that evaluation with a  
6 recommendation as to whether existing tax expenditures for that  
7 industry should be adjusted.

8 SECTION 23. REPEAL.--Section 6-4-5 NMSA 1978 (being Laws  
9 1987, Chapter 347, Section 5) is repealed.

10 SECTION 24. ADDITIONAL REPEAL.--Sections 7-1-6.57 and  
11 7-9-96.1 NMSA 1978 (being Laws 2007, Chapter 361, Sections 1  
12 and 7) are repealed.

13 SECTION 25. EFFECTIVE DATE.--

14 A. If this act takes effect on or before July 1,  
15 2017, the effective date of the provisions of Sections 4  
16 through 22 and 24 of this act is July 1, 2017.

17 B. If this act takes effect after July 1, 2017, the  
18 effective date of the provisions of Sections 4 through 22 and  
19 24 of this act is the first day of the month following the date  
20 this act takes effect.

21 C. The effective date of the provisions of Sections  
22 1 through 3 and 23 of this act is July 1, 2018.

23 SECTION 26. EMERGENCY.--It is necessary for the public  
24 peace, health and safety that this act take effect immediately.