

HOUSE BILL 579

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; CREATING A DEPENDENT DEDUCTION PURSUANT TO THE INCOME TAX ACT; AMENDING THE UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT TO DETERMINE IN-STATE SALES OF INTANGIBLES AND SERVICES BASED ON MARKET SOURCING RATHER THAN COST OF PERFORMANCE; PROVIDING FOR TAXATION OF CERTAIN INTERNET SELLERS AND MARKETPLACE PROVIDERS PURSUANT TO THE GROSS RECEIPTS AND COMPENSATING TAX ACT; ADDING AND AMENDING DEFINITIONS PURSUANT TO THAT ACT; AMENDING SOURCING RULES FROM THE PLACE OF BUSINESS OF THE SELLER TO DESTINATION-BASED SOURCING; INCREASING THE COMPENSATING TAX ON SERVICES; PROHIBITING CLASS ACTION SUITS AGAINST A MARKETPLACE PROVIDER FOR TAX OVERPAYMENTS; AMENDING A GROSS RECEIPTS TAX EXEMPTION FOR NONPROFITS AND A DEDUCTION FOR MANUFACTURERS; CREATING A DEDUCTION FOR MARKETPLACE SELLERS; AMENDING APPORTIONMENT OF BUSINESS INCOME PROVISIONS; IMPOSING A MUNICIPAL COMPENSATING TAX AND A COUNTY COMPENSATING TAX;

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1 AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978;
2 MAKING AN APPROPRIATION.

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

9 A. the administration and enforcement of the
10 following taxes or tax acts as they now exist or may hereafter
11 be amended:

12 (1) Income Tax Act;

13 (2) Withholding Tax Act;

14 (3) [~~Venture Capital Investment~~] Oil and Gas
15 Proceeds and Pass-Through Entity Withholding Tax Act;

16 (4) Gross Receipts and Compensating Tax Act,
17 Interstate Telecommunications Gross Receipts Tax Act and [~~any~~
18 ~~state gross receipts tax~~] Leased Vehicle Gross Receipts Tax
19 Act;

20 (5) Liquor Excise Tax Act;

21 (6) Local Liquor Excise Tax Act;

22 (7) any municipal local option gross receipts
23 tax or municipal compensating tax;

24 (8) any county local option gross receipts tax
25 or county compensating tax;

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- 1 (9) Special Fuels Supplier Tax Act;
2 (10) Gasoline Tax Act;
3 (11) petroleum products loading fee, which fee
4 shall be considered a tax for the purpose of the Tax
5 Administration Act;
6 (12) Alternative Fuel Tax Act;
7 (13) Cigarette Tax Act;
8 (14) Estate Tax Act;
9 (15) Railroad Car Company Tax Act;
10 (16) Investment Credit Act, rural job tax
11 credit, Laboratory Partnership with Small Business Tax Credit
12 Act, Technology Jobs and Research and Development Tax Credit
13 Act, Film Production Tax Credit Act, Affordable Housing Tax
14 Credit Act and high-wage jobs tax credit;
15 (17) Corporate Income and Franchise Tax Act;
16 (18) Uniform Division of Income for Tax
17 Purposes Act;
18 (19) Multistate Tax Compact;
19 (20) Tobacco Products Tax Act; and
20 (21) the telecommunications relay service
21 surcharge imposed by Section 63-9F-11 NMSA 1978, which
22 surcharge shall be considered a tax for the purposes of the Tax
23 Administration Act;

24 B. the administration and enforcement of the
25 following taxes, surtaxes, advanced payments or tax acts as

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1 they now exist or may hereafter be amended:

2 (1) Resources Excise Tax Act;

3 (2) Severance Tax Act;

4 (3) any severance surtax;

5 (4) Oil and Gas Severance Tax Act;

6 (5) Oil and Gas Conservation Tax Act;

7 (6) Oil and Gas Emergency School Tax Act;

8 (7) Oil and Gas Ad Valorem Production Tax Act;

9 (8) Natural Gas Processors Tax Act;

10 (9) Oil and Gas Production Equipment Ad

11 Valorem Tax Act;

12 (10) Copper Production Ad Valorem Tax Act;

13 (11) any advance payment required to be made

14 by any act specified in this subsection, which advance payment

15 shall be considered a tax for the purposes of the Tax

16 Administration Act;

17 (12) Enhanced Oil Recovery Act;

18 (13) Natural Gas and Crude Oil Production

19 Incentive Act; and

20 (14) intergovernmental production tax credit

21 and intergovernmental production equipment tax credit;

22 C. the administration and enforcement of the
23 following taxes, surcharges, fees or acts as they now exist or
24 may hereafter be amended:

25 (1) Weight Distance Tax Act;

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

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

5 (4) 911 emergency surcharge and the network
6 and database surcharge, which surcharges shall be considered
7 taxes for purposes of the Tax Administration Act;

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

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

14 (7) the gaming tax imposed pursuant to the
15 Gaming Control Act; and

16 D. the administration and enforcement of all other
17 laws, with respect to which the department is charged with
18 responsibilities pursuant to the Tax Administration Act, but
19 only to the extent that the other laws do not conflict with the
20 Tax Administration Act."

21 **SECTION 2.** Section 7-1-3 NMSA 1978 (being Laws 1965,
22 Chapter 248, Section 3, as amended) is amended to read:

23 "7-1-3. DEFINITIONS.--Unless the context clearly
24 indicates a different meaning, the definitions of words and
25 phrases as they are stated in this section are to be used, and

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1 whenever in the Tax Administration Act these words and phrases
2 appear, the singular includes the plural and the plural
3 includes the singular:

4 A. "automated clearinghouse transaction" means an
5 electronic credit or debit transmitted through an automated
6 clearinghouse payable to the state treasurer and deposited with
7 the fiscal agent of New Mexico;

8 B. "department" means the taxation and revenue
9 department, the secretary or any employee of the department
10 exercising authority lawfully delegated to that employee by the
11 secretary;

12 C. "electronic payment" means a payment made by
13 automated clearinghouse deposit, any funds wire transfer system
14 or a credit card, debit card or electronic cash transaction
15 through the internet;

16 D. "employee of the department" means any employee
17 of the department, including the secretary, or any person
18 acting as agent or authorized to represent or perform services
19 for the department in any capacity with respect to any law made
20 subject to administration and enforcement under the provisions
21 of the Tax Administration Act;

22 E. "financial institution" means any state or
23 federally chartered, federally insured depository institution;

24 F. "hearing officer" means a person who has been
25 designated by the chief hearing officer to serve as a hearing

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1 officer and who is:

2 (1) the chief hearing officer;

3 (2) an employee of the administrative hearings
4 office; or

5 (3) a contractor of the administrative
6 hearings office;

7 G. "Internal Revenue Code" means the Internal
8 Revenue Code of 1986, as that code may be amended or its
9 sections renumbered;

10 H. "levy" means the lawful power, hereby invested
11 in the secretary, to take into possession or to require the
12 present or future surrender to the secretary or the secretary's
13 delegate of any property or rights to property belonging to a
14 delinquent taxpayer;

15 I. "local option gross receipts tax" means a tax
16 authorized to be imposed by a county or municipality upon [the]
17 a taxpayer's gross receipts, as that term is defined in the
18 Gross Receipts and Compensating Tax Act, and required to be
19 collected by the department at the same time and in the same
20 manner as the gross receipts tax; [~~"local option gross receipts
21 tax" includes the taxes imposed pursuant to the Municipal Local
22 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
23 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,
24 Local Hospital Gross Receipts Tax Act and County Correctional
25 Facility Gross Receipts Tax Act and such other acts as may be~~

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1 ~~enacted authorizing counties or municipalities to impose taxes~~
2 ~~on gross receipts, which taxes are to be collected by the~~
3 ~~department in the same time and in the same manner as it~~
4 ~~collects the gross receipts tax;]~~

5 J. "managed audit" means a review and analysis
6 conducted by a taxpayer under an agreement with the department
7 to determine the taxpayer's compliance with a tax administered
8 pursuant to the Tax Administration Act and the presentation of
9 the results to the department for assessment of tax found to be
10 due;

11 K. "net receipts" means the total amount of money
12 paid by taxpayers to the department in a month pursuant to a
13 tax or tax act less any refunds disbursed in that month with
14 respect to that tax or tax act;

15 L. "overpayment" means an amount paid, pursuant to
16 any law subject to administration and enforcement under the
17 provisions of the Tax Administration Act, by a person to the
18 department or withheld from the person in excess of tax due
19 from the person to the state at the time of the payment or at
20 the time the amount withheld is credited against tax due;

21 M. "paid" includes the term "paid over";

22 N. "pay" includes the term "pay over";

23 O. "payment" includes the term "payment over";

24 P. "person" means any individual, estate, trust,
25 receiver, cooperative association, club, corporation, company,

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1 firm, partnership, limited liability company, limited liability
2 partnership, joint venture, syndicate, other association or
3 gas, water or electric utility owned or operated by a county or
4 municipality; "person" also means, to the extent permitted by
5 law, a federal, state or other governmental unit or
6 subdivision, or an agency, department or instrumentality
7 thereof; and "person", as used in Sections 7-1-72 through
8 7-1-74 NMSA 1978, also includes an officer or employee of a
9 corporation, a member or employee of a partnership or any
10 individual who, as such, is under a duty to perform any act in
11 respect of which a violation occurs;

12 Q. "property" means property or rights to property;

13 R. "property or rights to property" means any
14 tangible property, real or personal, or any intangible property
15 of a taxpayer;

16 S. "return" means any tax or information return,
17 application or form, declaration of estimated tax or claim for
18 refund, including any amendments or supplements to the return,
19 required or permitted pursuant to a law subject to
20 administration and enforcement pursuant to the Tax
21 Administration Act and filed with the secretary or the
22 secretary's delegate by or on behalf of any person;

23 T. "return information" means a taxpayer's name,
24 address, government-issued identification number and other
25 identifying information; any information contained in or

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1 derived from a taxpayer's return; any information with respect
2 to any actual or possible administrative or legal action by an
3 employee of the department concerning a taxpayer's return, such
4 as audits, managed audits, denial of credits or refunds,
5 assessments of tax, penalty or interest, protests of
6 assessments or denial of refunds or credits, levies or liens;
7 or any other information with respect to a taxpayer's return or
8 tax liability that was not obtained from public sources or that
9 was created by an employee of the department; but "return
10 information" does not include statistical data or other
11 information that cannot be associated with or directly or
12 indirectly identify a particular taxpayer;

13 U. "secretary" means the secretary of taxation and
14 revenue and, except for purposes of Subsection B of Section
15 7-1-4 NMSA 1978, also includes the deputy secretary or a
16 division director or deputy division director delegated by the
17 secretary;

18 V. "secretary or the secretary's delegate" means
19 the secretary or any employee of the department exercising
20 authority lawfully delegated to that employee by the secretary;

21 W. "security" means money, property or rights to
22 property or a surety bond;

23 X. "state" means any state of the United States,
24 the District of Columbia, the commonwealth of Puerto Rico and
25 any territory or possession of the United States;

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1 Y. "tax" means the total amount of each tax imposed
2 and required to be paid, withheld and paid or collected and
3 paid under provision of any law made subject to administration
4 and enforcement according to the provisions of the Tax
5 Administration Act, including the amount of any interest or
6 civil penalty relating thereto; "tax" also means any amount of
7 any abatement of tax made or any credit, rebate or refund paid
8 or credited by the department under any law subject to
9 administration and enforcement under the provisions of the Tax
10 Administration Act to any person contrary to law, including the
11 amount of any interest or civil penalty relating thereto;

12 Z. "tax return preparer" means a person who
13 prepares for others for compensation or who employs one or more
14 persons to prepare for others for compensation any return of
15 income tax, a substantial portion of any return of income tax,
16 any claim for refund with respect to income tax or a
17 substantial portion of any claim for refund with respect to
18 income tax; provided that a person shall not be a "tax return
19 preparer" merely because such person:

20 (1) furnishes typing, reproducing or other
21 mechanical assistance;

22 (2) is an employee who prepares an income tax
23 return or claim for refund with respect to an income tax return
24 of the employer, or of an officer or employee of the employer,
25 by whom the person is regularly and continuously employed; or

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1 (3) prepares as a trustee or other fiduciary
2 an income tax return or claim for refund with respect to income
3 tax for any person; and

4 AA. "taxpayer" means a person liable for payment of
5 any tax; a person responsible for withholding and payment or
6 for collection and payment of any tax; a person to whom an
7 assessment has been made, if the assessment remains unabated or
8 the amount thereof has not been paid; or a person who entered
9 into a special agreement pursuant to Section 7-1-21.1 NMSA 1978
10 to assume the liability of gross receipts tax or governmental
11 gross receipts tax of another person and the special agreement
12 was approved by the secretary pursuant to the Tax
13 Administration Act."

14 SECTION 3. Section 7-1-6.12 NMSA 1978 (being Laws 1983,
15 Chapter 211, Section 17, as amended) is amended to read:

16 "7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION
17 GROSS RECEIPTS AND COMPENSATING TAXES.--

18 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
19 shall be made to each municipality for which the department is
20 collecting a local option gross receipts tax and municipal
21 compensating tax imposed by that municipality in an amount,
22 subject to any increase or decrease made pursuant to Section
23 7-1-6.15 NMSA 1978, equal to the net receipts attributable to
24 the local option gross receipts tax and municipal compensating
25 tax imposed by that municipality, less any deduction for

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1 administrative cost determined and made by the department
2 pursuant to the provisions of the act authorizing imposition by
3 that municipality of the local option gross receipts tax and
4 municipal compensating tax and any additional administrative
5 fee withheld pursuant to [~~Subsection C of~~] Section 7-1-6.41
6 NMSA 1978.

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

12 SECTION 4. Section 7-1-6.13 NMSA 1978 (being Laws 1983,
13 Chapter 211, Section 18, as amended) is amended to read:

14 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION
15 GROSS RECEIPTS AND COMPENSATING TAXES.--

16 A. Except as provided in Subsection B of this
17 section, a transfer pursuant to Section 7-1-6.1 NMSA 1978 shall
18 be made to each county for which the department is collecting a
19 local option gross receipts tax and county compensating tax
20 imposed by that county in an amount, subject to any increase or
21 decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to
22 the net receipts attributable to the local option gross
23 receipts tax and county compensating tax imposed by that
24 county, less any deduction for administrative cost determined
25 and made by the department pursuant to the provisions of the

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1 act authorizing imposition by that county of the local option
2 gross receipts tax and county compensating tax and any
3 additional administrative fee withheld pursuant to [~~Subsection~~
4 ~~6-of~~] Section 7-1-6.41 NMSA 1978.

5 B. A transfer pursuant to this section may be
6 adjusted for a distribution made to a tax increment development
7 district with respect to a portion of a gross receipts tax
8 increment dedicated by a county pursuant to the Tax Increment
9 for Development Act."

10 SECTION 5. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
11 Chapter 211, Section 20, as amended by Laws 2015, Chapter 89,
12 Section 1 and by Laws 2015, Chapter 100, Section 1) is amended
13 to read:

14 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
15 MUNICIPALITIES OR COUNTIES.--

16 A. The provisions of this section apply to:

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

19 (2) any transfer to a municipality with
20 respect to any local option gross receipts tax or municipal
21 compensating tax imposed by that municipality;

22 (3) any transfer to a county with respect to
23 any local option gross receipts tax or county compensating tax
24 imposed by that county;

25 (4) any distribution to a county pursuant to

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1 Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

2 (5) any distribution to a municipality or a
3 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

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

7 (7) any distribution to a county from the
8 county government road fund pursuant to Section 7-1-6.26 NMSA
9 1978;

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

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

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

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1 municipality or county, then the following procedures shall be
2 carried out:

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

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

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

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1 "recoverable amount".

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

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

12 (2) that the municipality or county has ninety
13 days from the date notice is made to enter into a mutually
14 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 transfers
18 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 application
21 for a claim for refund that gave rise to the recoverable
22 amount, exclusive of any amended returns that may be attached
23 to the application.

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

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

3 (1) the department may collect the recoverable
4 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 (2)
10 and (3) of this subsection, if the municipality or county fails
11 to act within the ninety days, decreasing the amount of the
12 next six distributions or transfers to the municipality or
13 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 receipts
23 for that municipality or county; and

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

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

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

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

25 H. The secretary is authorized to decrease a

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

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1 decrease to or redirection of a distribution or transfer
2 pursuant to this subsection that arose:

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

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

15 I. Upon the direction of the secretary of finance
16 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
17 secretary shall temporarily withhold the balance of a
18 distribution to a municipality or county, net of any decrease
19 or redirected amount pursuant to Subsection H of this section
20 and any recoverable amount pursuant to Paragraph (2) of
21 Subsection B of this section, that has failed to submit an
22 audit report required by the Audit Act or a financial report
23 required by Subsection F of Section 6-6-2 NMSA 1978. The
24 amount to be withheld, the source of the withheld distribution
25 and the number of months that the distribution is to be

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1 withheld shall be as directed by the secretary of finance and
2 administration. A distribution withheld pursuant to this
3 subsection shall remain in the tax administration suspense fund
4 until distributed to the municipality or county and shall not
5 be distributed to the general fund. An amount withheld
6 pursuant to this subsection shall be distributed to the
7 municipality or county upon direction of the secretary of
8 finance and administration.

9 J. As used in this section:

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

16 (2) "amounts relating to prior periods" means
17 any amounts processed during the current month that adjust
18 amounts processed in a period or periods prior to the current
19 month regardless of whether the adjustment is a correction of a
20 department error or due to the filing of amended returns,
21 payment of department-issued assessments, filing or approval of
22 claims for refund, audit adjustments or other cause;

23 (3) "average distribution or transfer amount"
24 means the following amounts; provided that a distribution or
25 transfer that is negative shall not be used in calculating the

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1 amounts:

2 (a) the annual average of the total
3 amount distributed or transferred to a municipality or county
4 in each of the three twelve-month periods preceding the current
5 month;

6 (b) if a distribution or transfer to a
7 municipality or county has been made for less than three years,
8 the total amount distributed or transferred in the year
9 preceding the current month; or

10 (c) if a municipality or county has not
11 received distributions or transfers of net receipts for twelve
12 or more months, the monthly average of net receipts distributed
13 or transferred to the municipality or county preceding the
14 current month multiplied by twelve;

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

17 (5) "repayment agreement" means an agreement
18 between the department and a municipality or county under which
19 the municipality or county agrees to allow the department to
20 recover an amount determined pursuant to Paragraph (2) of
21 Subsection B of this section by decreasing distributions or
22 transfers to the municipality or county for one or more months
23 beginning with the distribution or transfer to be made with
24 respect to a designated month. No interest shall be charged."

25 SECTION 6. A new section of the Tax Administration Act is

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1 enacted to read:

2 "[NEW MATERIAL] DISTRIBUTION--MUNICIPALITIES AND
3 COUNTIES.--

4 A. Prior to January 1, 2021, a distribution
5 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to
6 municipalities from the net receipts attributable to the gross
7 receipts tax in an amount equal to one million two hundred
8 fifty thousand dollars (\$1,250,000). The amount to be
9 distributed to each municipality shall be in proportion to the
10 amount of net receipts transferred to the municipality pursuant
11 to Section 7-1-6.12 NMSA 1978 in the previous calendar year to
12 the total net receipts transferred to all municipalities in
13 that year.

14 B. Prior to January 1, 2021, a distribution
15 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to counties
16 from the net receipts attributable to the gross receipts tax in
17 an amount equal to seven hundred fifty thousand dollars
18 (\$750,000). The amount to be distributed to each county shall
19 be in proportion to the amount of net receipts transferred to
20 the county pursuant to Section 7-1-6.13 NMSA 1978 in the
21 previous calendar year to the total net receipts transferred to
22 all counties in that year."

23 SECTION 7. Section 7-1-11 NMSA 1978 (being Laws 1965,
24 Chapter 248, Section 16, as amended) is amended to read:

25 "7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--CREDENTIALS.--

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1 A. To determine the correct amount of tax due, the
2 department shall cause the records and books of account of
3 taxpayers to be inspected or audited at such times as the
4 department deems necessary for the effective execution of the
5 department's responsibilities; provided that the department
6 shall exclusively audit a marketplace provider for sales,
7 leases and licenses made by a marketplace seller that are
8 facilitated by the marketplace provider.

9 B. Auditors and other officials of the department
10 designated by the secretary are authorized to request and
11 require the production for examination of the records and books
12 of account of a taxpayer. Auditors and officials of the
13 department designated by the secretary shall be furnished with
14 credentials identifying them as such, which they shall display
15 to any taxpayer whose books are sought to be examined.

16 C. Taxpayers shall upon request make their records
17 and books of account available for inspection at reasonable
18 hours to the secretary or the secretary's delegate who presents
19 proper identification to the taxpayer.

20 D. If the taxpayer's records and books of account
21 do not exist or are insufficient to determine the taxpayer's
22 tax liability, if any, the department may use any reasonable
23 method of estimating the tax liability, including [~~but not~~
24 ~~limited to~~] using information about similar persons, businesses
25 or industries to estimate the taxpayer's liability.

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1 E. The secretary or the secretary's delegate shall
2 develop and maintain written audit policies and procedures for
3 all audit programs in which the department routinely conducts
4 field audits of taxpayers, including policies and procedures
5 concerning audit notification, scheduling, records that may be
6 examined, analysis that may be done, sampling procedures,
7 gathering information or evidence from third parties, policies
8 concerning the rights of taxpayers under audit and related
9 matters. Department audit policies and procedures shall be
10 made available to a person who requests them, at a reasonable
11 charge to defray the cost of preparing and distributing those
12 policies and procedures.

13 F. Nothing in this section shall be construed to
14 require the department to provide the following:

15 (1) information that is confidential pursuant
16 to Section 7-1-8 NMSA 1978; or

17 (2) methods, techniques and analysis used to
18 select taxpayers for audit, including the use of:

- 19 (a) data analytics;
20 (b) data mining;
21 (c) a scoring model;
22 (d) internal controls; and
23 (e) metadata used to detect fraud and
24 noncompliance.

25 G. For purposes of this section:

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1 (1) "data analytics" means the science of
2 examining data with the purpose of drawing conclusions about
3 the information;

4 (2) "data mining" means the process of
5 analyzing data from different perspectives and summarizing it
6 into useful information by collecting data into data sets for
7 the purpose of discovering patterns;

8 (3) "scoring model" means a predictive model
9 that can predict the chance of occurring of a fact and its
10 occurrence;

11 (4) "methods, techniques and methodology"
12 means a systematic way to accomplish a tactic, qualitative or
13 quantitative component of research and the use of a specific
14 method;

15 (5) "internal controls" means a process of
16 assuring achievement of an organization's objectives in
17 operational effectiveness and efficiency, reliable financial
18 reporting and compliance with laws, regulations and policies;
19 [and]

20 (6) "marketplace provider" means a
21 "marketplace provider" as that term is used in the Gross
22 Receipts and Compensating Tax Act;

23 (7) "marketplace seller" means a "marketplace
24 seller" as that term is used in the Gross Receipts and
25 Compensating Tax Act; and

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1 [~~(6)~~] (8) "metadata" means data that provides
2 information about other data."

3 SECTION 8. Section 7-1-14 NMSA 1978 (being Laws 1969,
4 Chapter 145, Section 1, as amended) is repealed and a new
5 Section 7-1-14 NMSA 1978 is enacted to read:

6 "7-1-14. [NEW MATERIAL] LOCATION WHERE CERTAIN GROSS
7 RECEIPTS ARE TO BE REPORTED.--

8 A. Gross receipts and deductions required to be
9 reported pursuant to the Gross Receipts and Compensating Tax
10 Act, Interstate Telecommunications Gross Receipts Tax Act,
11 Leased Vehicle Gross Receipts Tax Act, Supplemental Municipal
12 Gross Receipts Tax Act, Municipal Local Option Gross Receipts
13 and Compensating Taxes Act, Local Hospital Gross Receipts Tax
14 Act, County Local Option Gross Receipts and Compensating Taxes
15 Act and County Correctional Facility Gross Receipts Tax Act
16 shall be reported as follows:

17 (1) gross receipts and deductions from the
18 sale or lease of tangible personal property or licenses and
19 from the licensing of tangible personal property shall be
20 reported to the location of delivery of that tangible personal
21 property to the customer; provided that beginning January 1,
22 2021, the reporting location for receipts from leasing a
23 vehicle is the location where the customer first makes use of
24 the vehicle;

25 (2) except as otherwise provided in this

underscoring material = new
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1 section, a seller of services shall report the seller's gross
2 receipts and deductions as follows:

3 (a) professional services shall be
4 reported to the seller's place of business;

5 (b) for a person engaged in the
6 construction business, the location where the construction
7 project is performed is the "place of business", and all gross
8 receipts and deductions from that project are to be reported
9 from that place of business;

10 (c) for a person engaged in the business
11 of providing services with respect to the selling of real
12 estate, the location of the real property is the "place of
13 business", and all gross receipts and deductions from that sale
14 are to be reported from that place of business; and

15 (d) services, other than those described
16 in Subparagraphs (a) through (c) of this paragraph, beginning
17 January 1, 2021, are to be reported at the location where the
18 service is performed;

19 (3) gross receipts and deductions from the
20 sale, lease or granting of a license to use real property shall
21 be reported to the location of the real property; and

22 (4) the reporting location for gross receipts
23 and deductions from a customer for services provided by a
24 transportation network company pursuant to the Transportation
25 Network Company Services Act shall be the location where the

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1 customer enters the vehicle offered for a prearranged ride.

2 B. Consistent with this section and with
3 intergovernmental agreements, the secretary may, by rule,
4 provide for the reporting of gross receipts and deductions from
5 transactions not otherwise specified in this section, including
6 reporting gross receipts and deductions to locations:

7 (1) by taxpayers having more than one place of
8 business; and

9 (2) for reporting tax imposed by taxing
10 jurisdictions at the jurisdiction's location, including:

11 (a) outside a municipality;

12 (b) within an Indian reservation or
13 pueblo grant;

14 (c) within a tax increment development
15 district; and

16 (d) within any other taxing
17 jurisdiction.

18 C. The secretary shall develop and provide to
19 taxpayers a location-rate database that sets out the tax rates
20 applicable to locations within the state, by address, and
21 sellers who properly rely on this database shall not be liable
22 for any additional tax due to the use of an incorrect rate."

23 SECTION 9. A new section of the Income Tax Act is enacted
24 to read:

25 "[NEW MATERIAL] DEDUCTION FROM NET INCOME FOR CERTAIN

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1 DEPENDENTS.--

2 A. As long as the exemption amount pursuant to
3 Section 151 of the Internal Revenue Code means zero, a taxpayer
4 who is not a dependent of another individual and files a return
5 as a head of household or married filing jointly may claim a
6 deduction from net income in the amount calculated as follows:

7 (1) for a taxpayer filing as a head of
8 household, the product of four thousand dollars (\$4,000)
9 multiplied by the difference between the number of dependents
10 claimed on the taxpayer's return minus one; and

11 (2) for a taxpayer filing as married filing
12 jointly, the product of four thousand dollars (\$4,000)
13 multiplied by the difference between the number of dependents
14 claimed on the taxpayer's return minus two.

15 B. A taxpayer allowed a deduction pursuant to this
16 section shall report the amount of the deduction to the
17 department in a manner required by the department.

18 C. The department shall compile an annual report on
19 the deduction provided by this section that shall include the
20 number of taxpayers that claimed the deduction, the aggregate
21 amount of deductions claimed and any other information
22 necessary to evaluate the effectiveness of the deduction. The
23 department shall present the annual report to the revenue
24 stabilization and tax policy committee and the legislative
25 finance committee with an analysis of the cost of the

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1 deduction.

2 D. As used in this section, "dependent" means
3 "dependent" as defined in Section 152 of the Internal Revenue
4 Code."

5 SECTION 10. Section 7-4-10 NMSA 1978 (being Laws 1993,
6 Chapter 153, Section 1, as amended) is amended to read:

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

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

13 B. A taxpayer whose principal business activity in
14 New Mexico is manufacturing may elect to have business income
15 apportioned to this state

16 ~~[(1) in the taxable year beginning on or after~~
17 ~~January 1, 2014 and prior to January 1, 2015, by multiplying~~
18 ~~the income by a fraction, the numerator of which is twice the~~
19 ~~sales factor plus the property factor plus the payroll factor~~
20 ~~and the denominator of which is four;~~

21 ~~(2) in the taxable year beginning on or after~~
22 ~~January 1, 2015 and prior to January 1, 2016, by multiplying~~
23 ~~the income by a fraction, the numerator of which is three~~
24 ~~multiplied by the sales factor plus the property factor plus~~
25 ~~the payroll factor and the denominator of which is five;~~

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1 ~~(3) in the taxable year beginning on or after~~
2 ~~January 1, 2016 and prior to January 1, 2017, by multiplying~~
3 ~~the income by a fraction, the numerator of which is seven~~
4 ~~multiplied by the sales factor plus one and one-half multiplied~~
5 ~~by the property factor plus one and one-half multiplied by the~~
6 ~~payroll factor and the denominator of which is ten;~~

7 ~~(4) in the taxable year beginning on or after~~
8 ~~January 1, 2017 and prior to January 1, 2018, by multiplying~~
9 ~~the income by a fraction, the numerator of which is eight~~
10 ~~multiplied by the sales factor plus the property factor plus~~
11 ~~the payroll factor and the denominator of which is ten; and~~

12 ~~(5) in taxable years beginning on or after~~
13 ~~January 1, 2018, by multiplying the income by a fraction, the~~
14 ~~numerator of which is the total sales of the taxpayer in New~~
15 ~~Mexico during the taxable year and the denominator of which is~~
16 ~~the total sales of the taxpayer from any location within or~~
17 ~~outside of the state during] by multiplying the income by the~~
18 ~~sales factor for the taxable year.~~

19 C. A taxpayer whose principal business activity in
20 New Mexico is a headquarters operation may elect to have
21 business income apportioned to this state by multiplying the
22 income by [~~a fraction, the numerator of which is the total~~
23 ~~sales of the taxpayer in New Mexico during the taxable year and~~
24 ~~the denominator of which is the total sales of the taxpayer~~
25 ~~from any location within or outside of the state during] the~~

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1 sales factor for the taxable year.

2 D. To elect the method of apportionment provided by
3 Subsection B or C of this section, the taxpayer shall notify
4 the department of the election, in writing, no later than the
5 date on which the taxpayer files the return for the first
6 taxable year to which the election will apply. The election
7 will apply to that taxable year and to each taxable year
8 thereafter until the taxpayer notifies the department, in
9 writing, that the election is terminated, except that the
10 taxpayer shall not terminate the election until the method of
11 apportioning business income provided by Subsection B or C of
12 this section has been used by the taxpayer for at least three
13 consecutive taxable years, including a total of at least
14 thirty-six calendar months. The election will apply to the
15 separately filed return of the taxpayer or the combined or
16 consolidated return the taxpayer has elected to [~~be included~~]
17 file pursuant to Section 7-2A-8.3 or 7-2A-8.4 NMSA 1978.

18 E. For purposes of this section:

19 (1) "headquarters operation" means:

20 (a) the center of operations of a
21 business: 1) where corporate staff employees are physically
22 employed; 2) where centralized functions are performed,
23 including administrative, planning, managerial, human
24 resources, purchasing, information technology and accounting,
25 but not including operating a call center; 3) the function and

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1 purpose of which is to manage and direct most aspects and
2 functions of the business operations within a subdivided area
3 of the United States; 4) from which final authority over
4 regional or subregional offices, operating facilities and any
5 other offices of the business are issued; and 5) including
6 national and regional headquarters if the national headquarters
7 is subordinate only to the ownership of the business or its
8 representatives and the regional headquarters is subordinate to
9 the national headquarters; or

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

15 (2) "manufacturing" means combining or
16 processing components or materials to increase their value for
17 sale in the ordinary course of business, but does not include:

18 (a) construction services;
19 (b) farming;
20 (c) electric power generation; [~~except~~
21 ~~for electricity generation at a facility other than one for~~
22 ~~which both location approval and a certificate of convenience~~
23 ~~and necessity are required prior to commencing construction or~~
24 ~~operation of the facility, pursuant to the Public Utility Act;~~
25 ~~or]~~

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1 (d) processing natural resources,
2 including hydrocarbons; or
3 (e) processing or preparation of meals
4 for immediate consumption."

5 SECTION 11. Section 7-4-18 NMSA 1978 (being Laws 1965,
6 Chapter 203, Section 18) is amended to read:

7 "7-4-18. DETERMINATION OF SALES IN THIS STATE OF SERVICES
8 AND OTHER [THAN TANGIBLE PERSONAL] PROPERTY FOR INCLUSION IN
9 SALES FACTOR.--

10 A. Sales, other than sales [~~of tangible personal~~
11 ~~property~~] described in Section 7-4-17 NMSA 1978, are in this
12 state [if

13 ~~A. the income-producing activity is performed in~~
14 ~~this state; or~~

15 ~~B. the income-producing activity is performed both~~
16 ~~in and outside this state and a greater proportion of the~~
17 ~~income-producing activity is performed in this state than in~~
18 ~~any other state based on costs of performance]:~~

19 (1) in the case of sale, rental, lease or
20 license of real property, if and to the extent the real
21 property is located in this state;

22 (2) in the case of rental, lease or license of
23 tangible personal property, if and to the extent the tangible
24 personal property is located in this state;

25 (3) in the case of sale of a service, if and

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1 to the extent the service is delivered to a location in this
2 state; and

3 (4) in the case of sale, rental, lease or
4 license of intangible property, if and to the extent the
5 intangible property is used in this state.

6 B. If the state or states of assignment under
7 Subsection A of this section cannot be determined, the state or
8 states of assignment shall be reasonably approximated.

9 C. If the taxpayer is not taxable in a state to
10 which a sale is assigned pursuant to Subsection A of this
11 section or if the state of assignment cannot be determined or
12 reasonably approximated pursuant to Subsection B of this
13 section, that sale shall be excluded from the numerator and
14 denominator of the sales factor.

15 D. The department may promulgate rules as necessary
16 or appropriate to carry out the purposes of this section."

17 SECTION 12. Section 7-9-3 NMSA 1978 (being Laws 1978,
18 Chapter 46, Section 1, as amended) is amended to read:

19 "7-9-3. DEFINITIONS.--As used in the Gross Receipts and
20 Compensating Tax Act:

21 A. "buying" or "selling" means a transfer of
22 property for consideration or the performance of service for
23 consideration;

24 B. "department" means the taxation and revenue
25 department, the secretary of taxation and revenue or an

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1 employee of the department exercising authority lawfully
2 delegated to that employee by the secretary;

3 C. "digital good" means a digital product delivered
4 electronically, including software, music, photography, video,
5 reading material, an application and a ringtone;

6 ~~[G.]~~ D. "financial corporation" means a savings and
7 loan association or an incorporated savings and loan company,
8 trust company, mortgage banking company, consumer finance
9 company or other financial corporation;

10 ~~[D.]~~ E. "initial use" or "initially used" means the
11 first employment for the intended purpose and does not include
12 the following activities:

13 (1) observation of tests conducted by the
14 performer of services;

15 (2) participation in progress reviews,
16 briefings, consultations and conferences conducted by the
17 performer of services;

18 (3) review of preliminary drafts, drawings and
19 other materials prepared by the performer of the services;

20 (4) inspection of preliminary prototypes
21 developed by the performer of services; or

22 (5) similar activities;

23 ~~[E.]~~ F. "leasing" means an arrangement whereby, for
24 a consideration, property is employed for or by any person
25 other than the owner of the property, except that the granting

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1 of a license to use property is licensing and is not a lease;

2 ~~[F.]~~ G. "local option gross receipts tax" means a
3 tax authorized to be imposed by a county or municipality upon
4 ~~[the]~~ a taxpayer's gross receipts and required to be collected
5 by the department at the same time and in the same manner as
6 the gross receipts tax; ~~["local option gross receipts tax"~~
7 ~~includes the taxes imposed pursuant to the Municipal Local~~
8 ~~Option Gross Receipts Taxes Act, Supplemental Municipal Gross~~
9 ~~Receipts Tax Act, County Local Option Gross Receipts Taxes Act,~~
10 ~~Local Hospital Gross Receipts Tax Act, County Correctional~~
11 ~~Facility Gross Receipts Tax Act and such other acts as may be~~
12 ~~enacted authorizing counties or municipalities to impose taxes~~
13 ~~on gross receipts, which taxes are to be collected by the~~
14 ~~department;~~

15 ~~G.]~~ H. "manufactured home" means a movable or
16 portable housing structure for human occupancy that exceeds
17 either a width of eight feet or a length of forty feet
18 constructed to be towed on its own chassis and designed to be
19 installed with or without a permanent foundation;

20 ~~[H.]~~ I. "manufacturing" means combining or
21 processing components or materials to increase their value for
22 sale in the ordinary course of business, but does not include
23 construction services; farming; electric power generation;
24 processing of natural resources, including hydrocarbons; or the
25 processing or preparation of meals for immediate consumption;

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1 J. "manufacturing service" means the service of
2 combining or processing components or materials owned by
3 another but does not include construction services; farming;
4 electric power generation; processing of natural resources,
5 including hydrocarbons; or the processing or preparation of
6 meals for immediate consumption;

7 K. "marketplace provider" means a person who
8 facilitates the sale, lease or license of tangible personal
9 property or services or licenses for use of real property on a
10 marketplace seller's behalf, or on the marketplace provider's
11 own behalf, by:

12 (1) listing or advertising the sale, lease or
13 license, by any means, whether physical or electronic,
14 including by catalog, internet website or television or radio
15 broadcast; and

16 (2) either directly or indirectly, through
17 agreements or arrangements with third parties collecting
18 payment from the customer and transmitting that payment to the
19 seller, regardless of whether the marketplace provider receives
20 compensation or other consideration in exchange for the
21 marketplace provider's services;

22 L. "marketplace seller" means a person who sells,
23 leases or licenses tangible personal property or services or
24 who licenses the use of real property through a marketplace
25 provider;

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1 ~~[F.]~~ M. "person" means:

2 (1) an individual, estate, trust, receiver,
3 cooperative association, club, corporation, company, firm,
4 partnership, limited liability company, limited liability
5 partnership, joint venture, syndicate or other entity,
6 including any gas, water or electric utility owned or operated
7 by a county, municipality or other political subdivision of the
8 state; or

9 (2) a national, federal, state, Indian or
10 other governmental unit or subdivision, or an agency,
11 department or instrumentality of any of the foregoing;

12 ~~[J.]~~ N. "property" means:

13 (1) real property;

14 (2) tangible personal property, including
15 electricity and manufactured homes;

16 (3) licenses, ~~[other than]~~ including licenses
17 of digital goods, but not including the licenses of copyrights,
18 trademarks or patents; and

19 (4) franchises; ~~[Tangible personal property~~
20 ~~includes electricity and manufactured homes;~~

21 ~~[K.]~~ O. "research and development services" means an
22 activity engaged in for other persons for consideration, for
23 one or more of the following purposes:

24 (1) advancing basic knowledge in a recognized
25 field of natural science;

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~~[bracketed material] = delete~~

1 (2) advancing technology in a field of
2 technical endeavor;

3 (3) developing a new or improved product,
4 process or system with new or improved function, performance,
5 reliability or quality, whether or not the new or improved
6 product, process or system is offered for sale, lease or other
7 transfer;

8 (4) developing new uses or applications for an
9 existing product, process or system, whether or not the new use
10 or application is offered as the rationale for purchase, lease
11 or other transfer of the product, process or system;

12 (5) developing analytical or survey activities
13 incorporating technology review, application, trade-off study,
14 modeling, simulation, conceptual design or similar activities,
15 whether or not offered for sale, lease or other transfer; or

16 (6) designing and developing prototypes or
17 integrating systems incorporating the advances, developments or
18 improvements included in Paragraphs (1) through (5) of this
19 subsection;

20 [~~L.~~] P. "secretary" means the secretary of taxation
21 and revenue or the secretary's delegate;

22 [~~M.~~] Q. "service" means all activities engaged in
23 for other persons for a consideration, which activities involve
24 predominantly the performance of a service as distinguished
25 from selling or leasing property. "Service" includes

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1 activities performed by a person for its members or
2 shareholders. In determining what is a service, the intended
3 use, principal objective or ultimate objective of the
4 contracting parties shall not be controlling. "Service"
5 includes construction activities and all tangible personal
6 property that will become an ingredient or component part of a
7 construction project. That tangible personal property retains
8 its character as tangible personal property until it is
9 installed as an ingredient or component part of a construction
10 project in New Mexico. Sales of tangible personal property
11 that will become an ingredient or component part of a
12 construction project to persons engaged in the construction
13 business are sales of tangible personal property; and

14 [N.] R. "use" or "using" includes use, consumption
15 or storage other than storage for subsequent sale in the
16 ordinary course of business or for use solely outside this
17 state."

18 **SECTION 13.** 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 [~~except that:~~

25 A.] For a person who lacks physical presence in this

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1 state, including a marketplace provider, "engaging in business"
2 ~~[does not include: having a worldwide web site as a third-party~~
3 ~~content provider on a computer physically located in New Mexico~~
4 ~~but owned by another nonaffiliated person; and~~

5 B. ~~"engaging in business" does not include using a~~
6 ~~nonaffiliated third-party call center to accept and process~~
7 ~~telephone or electronic orders of tangible personal property or~~
8 ~~licenses primarily from non-New Mexico buyers, which orders are~~
9 ~~forwarded to a location outside New Mexico for filling, or to~~
10 ~~provide services primarily to non-New Mexico customers] means~~
11 having, in the previous calendar year, total taxable gross
12 receipts from sales, leases and licenses of tangible personal
13 property, sales of licenses and sales of services and licenses
14 for use of real property sourced to this state pursuant to
15 Section 7-1-14 NMSA 1978, of at least one hundred thousand
16 dollars (\$100,000)."

17 SECTION 14. Section 7-9-3.5 NMSA 1978 (being Laws 2003,
18 Chapter 272, Section 3, as amended) is amended to read:

19 "7-9-3.5. DEFINITION--GROSS RECEIPTS.--

20 A. As used in the Gross Receipts and Compensating
21 Tax Act:

22 (1) "gross receipts" means the total amount of
23 money or the value of other consideration received from selling
24 property in New Mexico, from leasing or licensing property
25 employed in New Mexico, from granting a right to use a

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~~[bracketed material] = delete~~

1 franchise employed in New Mexico, from selling services
2 performed outside New Mexico, the product of which is initially
3 used in New Mexico, or from performing services in New Mexico.
4 In an exchange in which the money or other consideration
5 received does not represent the value of the property or
6 service exchanged, "gross receipts" means the reasonable value
7 of the property or service exchanged;

8 (2) "gross receipts" includes:

9 (a) any receipts from sales of tangible
10 personal property handled on consignment;

11 (b) the total commissions or fees
12 derived from the business of buying, selling or promoting the
13 purchase, sale or lease, as an agent or broker on a commission
14 or fee basis, of any property, service, stock, bond or
15 security;

16 (c) amounts paid by members of any
17 cooperative association or similar organization for sales or
18 leases of personal property or performance of services by such
19 organization;

20 (d) amounts received from transmitting
21 messages or conversations by persons providing telephone or
22 telegraph services;

23 (e) amounts received by a New Mexico
24 florist from the sale of flowers, plants or other products that
25 are customarily sold by florists where the sale is made

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1 pursuant to orders placed with the New Mexico florist that are
2 filled and delivered outside New Mexico by an out-of-state
3 florist; ~~and~~

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

16 (g) receipts collected by a marketplace
17 provider engaging in business in the state from sales, leases
18 and licenses of tangible personal property, sales of licenses
19 and sales of services or licenses for use of real property that
20 are sourced to this state and are facilitated by the
21 marketplace provider on behalf of marketplace sellers,
22 regardless of whether the marketplace sellers are engaging in
23 business in the state; and

24 (3) "gross receipts" excludes:

25 (a) cash discounts allowed and taken;

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1 (b) New Mexico gross receipts tax,
2 governmental gross receipts tax and leased vehicle gross
3 receipts tax payable on transactions for the reporting period;

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

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

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

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

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

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

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

10 SECTION 15. Section 7-9-5 NMSA 1978 (being Laws 1966,
11 Chapter 47, Section 5, as amended) is amended to read:

12 "7-9-5. PRESUMPTION OF TAXABILITY--PROHIBITION AGAINST
13 CLASS ACTIONS.--

14 A. To prevent evasion of the gross receipts tax and
15 to aid in its administration, it is presumed that all receipts
16 of a person engaging in business are subject to the gross
17 receipts tax. ~~Any~~ A person engaged solely in transactions
18 specifically exempt under the provisions of the Gross Receipts
19 and Compensating Tax Act shall not be required to register or
20 file a return under that act.

21 B. If receipts from nontaxable charges for mobile
22 telecommunications services are aggregated with and not
23 separately stated from taxable charges for mobile
24 telecommunications services, ~~then~~ the charges for nontaxable
25 mobile telecommunications services shall be subject to gross

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1 receipts tax unless the home service provider can reasonably
2 identify nontaxable charges in its books and records that are
3 kept in the regular course of business. For the purposes of
4 this subsection, "charges for mobile telecommunications
5 services", "home service provider" and "mobile
6 telecommunications services" have the meanings given in the
7 federal Mobile Telecommunications Sourcing Act.

8 C. A marketplace provider engaging in business in
9 this state is not liable for amounts of gross receipts tax
10 collected incorrectly due to the marketplace provider
11 reasonably relying on erroneous information provided by the
12 seller.

13 D. No class action shall be brought in a court in
14 this state on behalf of purchasers in this state against a
15 marketplace provider arising from, or in any way related to, an
16 overpayment of gross receipts tax or compensating tax collected
17 by the marketplace provider, regardless of how such an action
18 is characterized."

19 SECTION 16. Section 7-9-6 NMSA 1978 (being Laws 1966,
20 Chapter 47, Section 6, as amended) is amended to read:

21 "7-9-6. SEPARATELY STATING THE GROSS RECEIPTS TAX.--

22 A. Taxpayers subject to the Gross Receipts and
23 Compensating Tax Act, when billing a customer, shall separately
24 state the amount of tax associated with the transaction or
25 provide a statement affirmatively indicating that the gross

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1 receipts tax is included in the amount billed.

2 B. When the gross receipts tax is stated separately
3 on the books of the seller or lessor, and if the total amount
4 of tax that is stated separately on transactions reportable
5 within one reporting period is in excess of the amount of gross
6 receipts tax otherwise payable on the transactions on which the
7 tax was stated separately, the excess amount of tax stated on
8 the transactions within that reporting period shall be included
9 in gross receipts."

10 SECTION 17. Section 7-9-7 NMSA 1978 (being Laws 1966,
11 Chapter 47, Section 7, as amended) is amended to read:

12 "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS
13 "COMPENSATING TAX".--

14 A. For the privilege of using tangible property in
15 New Mexico, there is imposed on the person using the property
16 an excise tax equal to five and one-eighth percent of the value
17 of tangible property that was:

18 (1) manufactured by the person using the
19 property in the state; or

20 (2) acquired inside or outside of this state
21 as the result of a transaction with a person located outside
22 this state that would have been subject to the gross receipts
23 tax had the tangible personal property been acquired from a
24 person with nexus with New Mexico [~~or~~

25 ~~(3) acquired as the result of a transaction~~

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1 ~~that was not initially subject to the compensating tax imposed~~
2 ~~by Paragraph (2) of this subsection or the gross receipts tax~~
3 ~~but which transaction, because of the buyer's subsequent use of~~
4 ~~the property, should have been subject to the compensating tax~~
5 ~~imposed by Paragraph (2) of this subsection or the gross~~
6 ~~receipts tax].~~

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

14 C. For the privilege of using a license or
15 franchise in New Mexico, there is imposed on the person using
16 the license or franchise an excise tax equal to the rate
17 provided in Subsection A of this section against the value of
18 the license or franchise in its use in this state. The
19 department by rule, ruling or instruction shall fairly
20 apportion, where appropriate, the value of a license or
21 franchise to its value in use in New Mexico. For use of a
22 license or franchise to be taxable under this subsection, the
23 value of the license or franchise shall be acquired inside or
24 outside this state as the result of a transaction with a person
25 located outside this state that would have been subject to the

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1 gross receipts tax had the license or franchise been acquired
2 from a person with nexus with this state.

3 ~~[G.]~~ D. For the privilege of using services
4 ~~[rendered]~~ in New Mexico, there is imposed on the person using
5 ~~[such]~~ the services an excise tax equal to ~~[five percent of]~~
6 the rate provided in Subsection A of this section against the
7 value of the services at the time ~~[they were rendered]~~ the
8 product of the service was acquired. For use of services to be
9 taxable under this subsection, ~~[must]~~ the services shall have
10 been ~~[rendered as the result of a transaction that was not~~
11 ~~initially subject to the gross receipts tax but which~~
12 ~~transaction, because of the buyer's subsequent use of the~~
13 ~~services, should have been subject to the gross receipts tax]~~
14 performed by a person outside this state and the product of the
15 service was acquired inside or outside this state as the result
16 of a transaction with a person located outside this state that
17 would have been subject to the gross receipts tax had the
18 service or product of the service been acquired from a person
19 with nexus with this state.

20 ~~[D.]~~ E. The tax imposed by this section shall be
21 referred to as the "compensating tax".

22 **SECTION 18.** Section 7-9-7.1 NMSA 1978 (being Laws 1993,
23 Chapter 45, Section 1, as amended) is amended to read:

24 "7-9-7.1. DEPARTMENT BARRED FROM TAKING COLLECTION
25 ACTIONS WITH RESPECT TO CERTAIN ~~[COMPENSATING]~~ TAX

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1 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 prohibition in Subsection A of this section~~
13 ~~does not prevent the department from enforcing collection of~~
14 ~~compensating tax on purchases from persons who are not~~
15 ~~individuals, who are agents for collection pursuant to Section~~
16 ~~7-9-10 NMSA 1978 or who use the property in the course of~~
17 ~~engaging in business in New Mexico or from enforcing collection~~
18 ~~of compensating tax due on purchase of manufactured homes.] The~~
19 ~~department shall take no action to enforce collection of gross~~
20 ~~receipts tax for a tax period prior to July 1, 2019 on persons~~
21 ~~engaging in business if that person:~~

22 ~~(1) lacked physical presence in the state; and~~

23 ~~(2) did not report taxable gross receipts~~
24 ~~prior to July 1, 2019."~~

25 SECTION 19. Section 7-9-13.1 NMSA 1978 (being Laws 1989,

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1 Chapter 262, Section 4) is amended to read:

2 "7-9-13.1. EXEMPTION--GROSS RECEIPTS TAX--CERTAIN
3 SERVICES [~~PERFORMED OUTSIDE THE STATE THE PRODUCT OF WHICH IS~~
4 ~~INITIALLY USED IN NEW MEXICO--EXCEPTIONS~~].--

5 A. [~~Except as provided otherwise in Subsection B of~~
6 ~~this section~~] Exempted from the gross receipts tax are the
7 receipts from selling research and development services
8 [~~performed outside New Mexico the product of which is initially~~
9 ~~used in New Mexico.~~

10 B. ~~The exemption provided by this section does not~~
11 ~~apply to research and development services other than research~~
12 ~~and development services] that are sold:~~

13 (1) [~~sold~~] between affiliated corporations;

14 (2) [~~sold~~] to the United States by persons,
15 other than organizations described in Subsection A of Section
16 7-9-29 NMSA 1978, who are prime contractors operating
17 facilities in New Mexico designated as national laboratories by
18 act of congress; or

19 (3) [~~sold~~] to persons, other than
20 organizations described in Subsection A of Section 7-9-29 NMSA
21 1978, who are prime contractors operating facilities in New
22 Mexico designated as national laboratories by act of congress.

23 [~~G.~~] B. An "affiliated corporation" means a
24 corporation that directly or indirectly, through one or more
25 intermediaries controls, is controlled by or is under common

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1 control with the subject corporation. "Control" means
2 ownership of stock in a corporation [~~which~~] that represents at
3 least eighty percent of the total voting power of that
4 corporation and has a stated or par value equal to at least
5 eighty percent of the total stated or par value of the stock of
6 that corporation."

7 SECTION 20. Section 7-9-29 NMSA 1978 (being Laws 1970,
8 Chapter 12, Section 3, as amended) is amended to read:

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

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

18 B. Exempted from the gross receipts tax are the
19 receipts from carrying on chamber of commerce, visitor bureau
20 and convention bureau functions of organizations that
21 demonstrate to the department that they have been granted
22 exemption from the federal income tax by the United States
23 commissioner of internal revenue as organizations described in
24 Section 501(c)(6) of the United States Internal Revenue Code of
25 [~~1954~~] 1986, as that section may be amended or renumbered.

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1 C. This section does not apply to receipts derived
2 from an unrelated trade or business as defined in Section 513
3 of the United States Internal Revenue Code of [~~1954~~] 1986, as
4 that section may be amended or renumbered.

5 D. The exemptions provided by this section do not
6 apply to an organization that in the previous calendar year
7 had, or reasonably anticipates having in the current calendar
8 year, more than seventy-five million dollars (\$75,000,000) in
9 gross receipts; provided that the organization is not a health
10 care facility licensed by the state or a federally qualified
11 health care facility."

12 SECTION 21. Section 7-9-46 NMSA 1978 (being Laws 1969,
13 Chapter 144, Section 36, as amended) is amended to read:

14 "7-9-46. DEDUCTION--GROSS RECEIPTS [~~TAX~~]--GOVERNMENTAL
15 GROSS RECEIPTS--SALES TO MANUFACTURERS AND MANUFACTURING
16 SERVICE PROVIDERS.--

17 A. Receipts from selling tangible personal property
18 may be deducted from gross receipts or from governmental gross
19 receipts if the sale is made to a person engaged in the
20 business of manufacturing who delivers a nontaxable transaction
21 certificate to the seller. The buyer delivering the nontaxable
22 transaction certificate must incorporate the tangible personal
23 property as an ingredient or component part of the product that
24 the buyer is in the business of manufacturing.

25 B. Receipts from selling [~~tangible personal~~

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1 ~~property that is~~ a manufacturing consumable ~~[and used in such~~
2 ~~a way that it is consumed in the manufacturing process of a~~
3 ~~product, provided that the tangible personal property is not a~~
4 ~~tool or equipment used to create the manufactured product, to a~~
5 ~~person engaged in the business of manufacturing that product~~
6 ~~and who delivers a nontaxable transaction certificate to the~~
7 ~~seller]~~ to a manufacturer or a manufacturing service provider
8 may be deducted ~~[in the following percentages]~~ from gross
9 receipts or from governmental gross receipts

10 ~~[(1) twenty percent of receipts received prior~~
11 ~~to January 1, 2014;~~

12 ~~(2) forty percent of receipts received in~~
13 ~~calendar year 2014;~~

14 ~~(3) sixty percent of receipts received in~~
15 ~~calendar year 2015;~~

16 ~~(4) eighty percent of receipts received in~~
17 ~~calendar year 2016; and~~

18 ~~(5) one hundred percent of receipts received~~
19 ~~on or after January 1, 2017] if the buyer delivers a nontaxable~~
20 ~~transaction certificate to the seller.~~

21 C. Receipts from selling or leasing qualified
22 equipment may be deducted from gross receipts if the sale is
23 made to, or the lease is entered into with, a person engaged in
24 the business of manufacturing or a manufacturing service
25 provider who delivers a nontaxable transaction certificate to

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1 the seller; provided that a manufacturer or manufacturing
2 service provider delivering a nontaxable transaction
3 certificate with respect to the qualified equipment may not
4 claim an investment credit pursuant to the Investment Credit
5 Act for that same equipment.

6 ~~[G.]~~ D. The purpose of the deductions provided in
7 this section is to encourage manufacturing businesses to locate
8 in New Mexico and to reduce the tax burden, including reducing
9 pyramiding, on the tangible personal property that is consumed
10 in the manufacturing process and that is purchased by
11 manufacturing businesses in New Mexico.

12 ~~[D.]~~ E. The department shall annually report to the
13 revenue stabilization and tax policy committee the aggregate
14 amount of deductions taken pursuant to this section, the number
15 of taxpayers claiming each of the deductions and any other
16 information that is necessary to determine that the deductions
17 are performing the purposes for which they are enacted.

18 ~~[E.]~~ F. A taxpayer deducting gross receipts
19 pursuant to this section shall report the amount deducted
20 separately for each deduction provided in this section and
21 attribute the amount of the deduction to the appropriate
22 authorization provided in this section in a manner required by
23 the department that facilitates the evaluation by the
24 legislature of the benefit to the state of these deductions.

25 ~~[F.]~~ G. As used in ~~[Subsection B of]~~ this section:

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1 (1) "manufacturing consumable" means tangible
2 personal property, other than qualified equipment or an
3 ingredient or component part of a manufactured product, that is
4 incorporated into, destroyed, depleted or transformed in the
5 process of manufacturing a product, [~~(1)~~] including
6 electricity, fuels, water, manufacturing aids and supplies,
7 chemicals, gases, repair parts, spares and other tangibles used
8 to manufacture a product, but [~~(2)~~] excluding tangible personal
9 property used in [~~(a)~~] the generation of power; [~~(b)~~] the
10 processing of natural resources, including hydrocarbons; and
11 [~~(c)~~] the processing and preparation of meals for immediate
12 consumption [~~on— or off—premises~~];

13 (2) "manufacturing operation" means a plant
14 operated by a manufacturer or manufacturing service provider
15 that employs personnel to perform production tasks to produce
16 goods, in conjunction with machinery and equipment; and

17 (3) "qualified equipment" means machinery,
18 equipment and tools, including component, repair, replacement
19 and spare parts thereof, that are used directly in the
20 manufacturing process of a manufacturing operation. "Qualified
21 equipment" includes computer hardware and software used
22 directly in the manufacturing process of a manufacturing
23 operation but excludes any motor vehicle that is required to be
24 registered in this state pursuant to the Motor Vehicle Code."

25 SECTION 22. A new section of the Gross Receipts and

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1 Compensating Tax Act is enacted to read:

2 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--MARKETPLACE
3 SELLER.--

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

13 B. The deduction provided by this section shall not
14 apply if the marketplace provider is determined not to owe the
15 tax due to the marketplace provider's reliance on information
16 provided by the seller as determined pursuant to Subsection C
17 of Section 7-9-5 NMSA 1978."

18 **SECTION 23.** A new section of the Gross Receipts and
19 Compensating Tax Act is enacted to read:

20 "[NEW MATERIAL] AUTHORITY TO ESTABLISH STANDARDS FOR
21 CERTIFIED SERVICE PROVIDERS.--

22 A. The secretary is authorized to provide
23 information, upon which taxpayers may rely, as to the
24 taxability of gross receipts from particular transactions,
25 including taxability matrices, and is further authorized to

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1 establish standards for the certification of service providers
2 that offer software-based systems to enable taxpayers to
3 properly determine the taxability of gross receipts from
4 particular transactions.

5 B. As used in this section, "certified service
6 provider" means "certified service provider" as defined in the
7 Streamlined Sales and Use Tax Administration Act."

8 SECTION 24. Section 7-19-14 NMSA 1978 (being Laws 1979,
9 Chapter 397, Section 5, as amended) is amended to read:

10 "7-19-14. SPECIFIC EXEMPTIONS.--No supplemental municipal
11 gross receipts tax shall be imposed on the gross receipts
12 arising from

13 ~~[A. transporting persons or property for hire by~~
14 ~~railroad, motor vehicle, air transportation or any other means~~
15 ~~from one point within the municipality to another point outside~~
16 ~~the municipality; or~~

17 B.] a business located outside the boundaries of a
18 municipality on land owned by that municipality for which a
19 gross receipts tax distribution is made pursuant to Section
20 7-1-6.4 NMSA 1978."

21 SECTION 25. Section 7-19D-1 NMSA 1978 (being Laws 1993,
22 Chapter 346, Section 1) is amended to read:

23 "7-19D-1. SHORT TITLE.--Chapter 7, Article 19D NMSA 1978
24 may be cited as the "Municipal Local Option Gross Receipts and
25 Compensating Taxes Act"."

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1 SECTION 26. Section 7-19D-5 NMSA 1978 (being Laws 1993,
2 Chapter 346, Section 5, as amended) is amended to read:

3 "7-19D-5. SPECIFIC EXEMPTIONS.--No tax authorized by the
4 provisions of the Municipal Local Option Gross Receipts and
5 Compensating Taxes Act shall be imposed on the gross receipts
6 arising from

7 ~~[A. transporting persons or property for hire by~~
8 ~~railroad, motor vehicle, air transportation or any other means~~
9 ~~from one point within the municipality to another point outside~~
10 ~~the municipality; or~~

11 ~~B.]~~ a business located outside the boundaries of a
12 municipality on land owned by that municipality for which a
13 state gross receipts tax distribution is made pursuant to
14 Section 7-1-6.4 NMSA 1978."

15 SECTION 27. Section 7-19D-7 NMSA 1978 (being Laws 1993,
16 Chapter 346, Section 7, as amended) is amended to read:

17 "7-19D-7. COLLECTION BY DEPARTMENT [~~TRANSFER OF~~
18 ~~PROCEEDS--DEDUCTIONS~~].--~~[A.]~~ The department shall collect each
19 tax imposed pursuant to the provisions of the Municipal Local
20 Option Gross Receipts and Compensating Taxes Act in the same
21 manner and at the same time it collects the state gross
22 receipts [~~tax~~] and compensating taxes.

23 ~~[B. Except as provided in Subsection C of this~~
24 ~~section, the department shall withhold an administrative fee~~
25 ~~pursuant to Section 1 of this 1997 act. The department shall~~

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1 ~~transfer to each municipality for which it is collecting a tax~~
2 ~~pursuant to the provisions of the Municipal Local Option Gross~~
3 ~~Receipts Taxes Act the amount of each tax collected for that~~
4 ~~municipality, less the administrative fee withheld and less any~~
5 ~~disbursements for tax credits, refunds and the payment of~~
6 ~~interest applicable to the tax. The transfer to the~~
7 ~~municipality shall be made within the month following the month~~
8 ~~in which the tax is collected.~~

9 G. ~~With respect to the municipal gross receipts tax~~
10 ~~imposed by a municipality pursuant to Section 7-19D-9 NMSA~~
11 ~~1978, the department shall withhold the administrative fee~~
12 ~~pursuant to Section 1 of this 1997 act only on that portion of~~
13 ~~the municipal gross receipts tax arising from a municipal gross~~
14 ~~receipts tax rate in excess of one-half of one percent.]"~~

15 SECTION 28. A new Section 7-19D-9.1 NMSA 1978 is enacted
16 to read:

17 "7-19D-9.1. [NEW MATERIAL] MUNICIPAL COMPENSATING TAX.--

18 A. For the privilege of using tangible personal
19 property in a municipality, there is imposed on the person
20 using the property an excise tax at a rate equal to the
21 combined rates imposed and in effect pursuant to the
22 Supplemental Municipal Gross Receipts Tax Act and the Municipal
23 Local Option Gross Receipts and Compensating Taxes Act of the
24 value of tangible personal property that was:

25 (1) manufactured by the person using the

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1 property in the state; or

2 (2) acquired inside or outside this state as
3 the result of a transaction with a person located outside this
4 state that would have been subject to the state gross receipts
5 tax had the tangible personal property been acquired from a
6 person with nexus with New Mexico.

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

15 C. For the privilege of using a license or
16 franchise in a municipality, there is imposed on the person
17 using the license or franchise an excise tax equal to the tax
18 rate provided in Subsection A of this section against the value
19 of the license or franchise as determined pursuant to Section
20 7-9-7 NMSA 1978. The department by rule, ruling or instruction
21 shall fairly apportion, where appropriate, the value of a
22 license or franchise to its value in use in the municipality.
23 For use of a license or franchise to be taxable under this
24 subsection, the value of the license or franchise shall be
25 acquired inside or outside this state as the result of a

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1 transaction with a person located outside this state that would
2 have been subject to the gross receipts tax had the license or
3 franchise been acquired from a person with nexus with this
4 state.

5 D. For the privilege of using services in a
6 municipality, there is imposed on the person using the services
7 an excise tax at the rate provided in Subsection A of this
8 section of the value of the services at the time the product of
9 the service was acquired. For use of services to be taxable
10 under this subsection, the services shall have been performed
11 by a person outside this state and the product of which was
12 acquired inside or outside this state as the result of a
13 transaction with a person located outside this state that would
14 have been subject to the gross receipts tax had the service or
15 product of the service been acquired from a person with nexus
16 with this state.

17 E. The governing body of a municipality may
18 dedicate the revenue from the tax imposed pursuant to this
19 section for any municipal purpose. If the governing body
20 proposes to dedicate revenue for a specific purpose, the
21 dedicated revenue shall be used by the municipality for that
22 purpose unless a subsequent ordinance is adopted to change the
23 purpose to which the revenue is dedicated or to place the
24 revenue in the general fund of the municipality.

25 F. Any law that affects the municipal compensating

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1 tax, or any law supplemental or otherwise appertaining thereto,
2 shall not be repealed or amended or otherwise directly or
3 indirectly modified in such a manner as to impair adversely any
4 outstanding revenue bonds that may be secured by a pledge of
5 such municipal compensating tax unless such outstanding revenue
6 bonds have been discharged in full or provision has been fully
7 made therefor.

8 G. The tax imposed by this section may be cited as
9 the "municipal compensating tax".

10 SECTION 29. Section 7-20E-1 NMSA 1978 (being Laws 1993,
11 Chapter 354, Section 1) is amended to read:

12 "7-20E-1. SHORT TITLE.--Chapter 7, Article 20E NMSA 1978
13 may be cited as the "County Local Option Gross Receipts and
14 Compensating Taxes Act".

15 SECTION 30. Section 7-20E-7 NMSA 1978 (being Laws 1993,
16 Chapter 354, Section 7, as amended) is amended to read:

17 "7-20E-7. COLLECTION BY DEPARTMENT [~~TRANSFER OF~~
18 ~~PROCEEDS--DEDUCTIONS~~].--[A.] The department shall collect each
19 tax imposed pursuant to the provisions of the County Local
20 Option Gross Receipts and Compensating Taxes Act in the same
21 manner and at the same time it collects the state gross
22 receipts [~~tax~~] and compensating taxes.

23 [~~B. The department shall withhold an administrative~~
24 ~~fee pursuant to Section 7-1-6.41 NMSA 1978. The department~~
25 ~~shall transfer to each county for which it is collecting a tax~~

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1 ~~pursuant to the provisions of the County Local Option Gross~~
2 ~~Receipts Taxes Act the amount of each tax collected for that~~
3 ~~county, less the administrative fee withheld and less any~~
4 ~~disbursements for tax credits, refunds and the payment of~~
5 ~~interest applicable to the tax. The transfer to the county~~
6 ~~shall be made within the month following the month in which the~~
7 ~~tax is collected.]"~~

8 SECTION 31. A new Section 7-20E-9.1 NMSA 1978 is enacted
9 to read:

10 "7-20E-9.1. [NEW MATERIAL] COUNTY COMPENSATING TAX.--

11 A. For the privilege of using tangible personal
12 property in a county, there is imposed on the person using the
13 property an excise tax at a rate equal to the combined rates
14 imposed and in effect pursuant to the Local Hospital Gross
15 Receipts Tax Act, the County Local Option Gross Receipts and
16 Compensating Taxes Act and the County Correctional Facility
17 Gross Receipts Tax Act of the value of tangible personal
18 property that was:

19 (1) manufactured by the person using the
20 property in the state; or

21 (2) acquired inside or outside this state as
22 the result of a transaction with a person located outside this
23 state that would have been subject to the state gross receipts
24 tax had the tangible personal property been acquired from a
25 person with nexus with New Mexico.

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

9 C. For the privilege of using a license or
10 franchise in a county, there is imposed on the person using the
11 license or franchise an excise tax equal to the tax rate
12 provided in Subsection A of this section against the value of
13 the license or franchise as determined pursuant to Section
14 7-9-7 NMSA 1978. The department by rule, ruling or instruction
15 shall fairly apportion, where appropriate, the value of a
16 license or franchise to its value in use in the county. For
17 use of a license or franchise to be taxable under this
18 subsection, the value of the license or franchise shall be
19 acquired inside or outside this state as the result of a
20 transaction with a person located outside this state that would
21 have been subject to the gross receipts tax had the license or
22 franchise been acquired from a person with nexus with this
23 state.

24 D. For the privilege of using services in a county,
25 there is imposed on the person using the services an excise tax

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1 at the rate provided in Subsection A of this section of the
2 value of the services at the time the product of the service
3 was acquired. For use of services to be taxable under this
4 subsection, the services shall have been performed by a person
5 outside this state and the product of which was acquired inside
6 or outside this state as the result of a transaction with a
7 person located outside this state that would have been subject
8 to the gross receipts tax had the service or product of the
9 service been acquired from a person with nexus with this state.

10 E. The governing body of a county may dedicate the
11 revenue from the tax imposed pursuant to this section for any
12 county purpose. If the governing body proposes to dedicate
13 revenue for a specific purpose, the dedicated revenue shall be
14 used by the county for that purpose unless a subsequent
15 ordinance is adopted to change the purpose to which the revenue
16 is dedicated or to place the revenue in the general fund of the
17 county.

18 F. Any law that affects the county compensating
19 tax, or any law supplemental or otherwise appertaining thereto,
20 shall not be repealed or amended or otherwise directly or
21 indirectly modified in such a manner as to impair adversely any
22 outstanding revenue bonds that may be secured by a pledge of
23 such county compensating tax unless such outstanding revenue
24 bonds have been discharged in full or provision has been fully
25 made therefor.

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1 G. The tax imposed by this section may be cited as
2 the "county compensating tax"."

3 **SECTION 32. TEMPORARY PROVISION--REFERENCES IN LAW.--**

4 A. References in law to the County Local Option
5 Gross Receipts Taxes Act shall be deemed to be references to
6 the County Local Option Gross Receipts and Compensating Taxes
7 Act.

8 B. References in law to the Municipal Local Option
9 Gross Receipts Taxes Act shall be deemed to be references to
10 the Municipal Local Option Gross Receipts and Compensating
11 Taxes Act.

12 **SECTION 33. REPEAL.--**Sections 7-9-26.1, 7-9-54.1, 7-9-57,
13 7-9-74, 7-9-76, 7-9-76.2, 7-9-79.2, 7-9-86, 7-9-91, 7-9-94,
14 7-9-96, 7-9-97, 7-9-99 through 7-9-102, 7-9-103.1, 7-9-103.2,
15 7-9-105 and 7-9-106 NMSA 1978 (being Laws 2003, Chapter 62,
16 Section 1, Laws 1992, Chapter 40, Section 1, Laws 1969, Chapter
17 144, Section 47, Laws 1971, Chapter 217, Section 2, Laws 1977,
18 Chapter 288, Section 2, Laws 1984, Chapter 2, Section 6, Laws
19 2007, Chapter 204, Section 9, Laws 1995, Chapter 80, Section 1,
20 Laws 2001, Chapter 135, Section 1, Laws 2005, Chapter 104,
21 Sections 23 and 26, Laws 2005, Chapter 169, Section 1, Laws
22 2006, Chapter 35, Sections 1 and 2, Laws 2007, Chapter 3,
23 Sections 16 and 17, Laws 2012, Chapter 12, Sections 2 and 3,
24 Laws 2007, Chapter 45, Section 6 and Laws 2018, Chapter 62,
25 Section 1, as amended) are repealed.

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1 **SECTION 34. DELAYED REPEAL.--**

2 A. Sections 7-9A-1 through 7-9A-11 NMSA 1978 (being
3 Laws 1979, Chapter 347, Sections 1 and 2; Laws 2001, Chapter
4 57, Section 2 and Laws 2001, Chapter 337, Section 2; Laws 1979,
5 Chapter 347, Sections 3 through 7; Laws 1983, Chapter 206,
6 Section 6; Laws 1979, Chapter 347, Sections 8 and 9; and Laws
7 1997, Chapter 62, Section 2, as amended) are repealed effective
8 July 1, 2020.

9 B. Sections 7-20C-5, 7-20E-5 and 7-20F-6 NMSA 1978
10 (being Laws 1991, Chapter 176, Section 5, Laws 1993, Chapter
11 354, Section 5 and Laws 1993, Chapter 303, Section 6, as
12 amended) are repealed effective January 1, 2021.

13 C. Section 7-1-6.55 NMSA 1978 (being Laws 2007,
14 Chapter 331, Section 4) is repealed effective July 1, 2021.

15 **SECTION 35. APPLICABILITY.--**

16 A. The provisions of Section 9 of this act apply to
17 taxable years beginning on or after January 1, 2019.

18 B. The provisions of Sections 10 and 11 of this act
19 apply to taxable years beginning on or after January 1, 2020.

20 **SECTION 36. EFFECTIVE DATE.--**

21 A. The effective date of the provisions of Sections
22 6, 7, 12 through 16, 18, 20 through 23 and 33 of this act is
23 July 1, 2019.

24 B. The effective date of the provisions of Sections
25 8, 10 and 11 of this act is January 1, 2020.

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C. The effective date of the provisions of Sections
1 through 5, 17, 19 and 24 through 32 of this act is January 1,
2021.