

1 HOUSE BILL 215

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO THE STATE FAIRGROUNDS; ENACTING THE STATE FAIR
12 FUNDING ACT; AUTHORIZING A STATE FAIR SURCHARGE; PROHIBITING
13 PROCEEDS OF THE STATE FAIR SURCHARGE TO BE USED TO BENEFIT
14 PROPERTY LEASED TO OR UNDER THE CONTROL OF A PERSON LICENSED
15 PURSUANT TO THE HORSE RACING ACT OR THE GAMING CONTROL ACT;
16 EXEMPTING FROM THE GROSS RECEIPTS AND GOVERNMENTAL GROSS
17 RECEIPTS TAXES RECEIPTS ATTRIBUTABLE TO THE STATE FAIRGROUNDS
18 IF A STATE FAIR SURCHARGE IS IMPOSED.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

23 "7-1-2. APPLICABILITY.--The Tax Administration Act
24 applies to and governs:

25 A. the administration and enforcement of the

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1 following taxes or tax acts as they now exist or may hereafter
2 be amended:

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

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1 credit, [~~New Mexico filmmaker tax credit~~] Affordable Housing
2 Tax Credit Act, high-wage jobs tax credit and Research and
3 Development Small Business Tax Credit Act;

4 (17) Corporate Income and Franchise Tax Act;

5 (18) Uniform Division of Income for Tax
6 Purposes Act;

7 (19) Multistate Tax Compact;

8 (20) Tobacco Products Tax Act; and

9 (21) the telecommunications relay service
10 surcharge imposed by Section 63-9F-11 NMSA 1978, which
11 surcharge shall be considered a tax for the purposes of the Tax
12 Administration Act;

13 B. the administration and enforcement of the
14 following taxes, surtaxes, advanced payments or tax acts as
15 they now exist or may hereafter be amended:

16 (1) Resources Excise Tax Act;

17 (2) Severance Tax Act;

18 (3) any severance surtax;

19 (4) Oil and Gas Severance Tax Act;

20 (5) Oil and Gas Conservation Tax Act;

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

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

23 (8) Natural Gas Processors Tax Act;

24 (9) Oil and Gas Production Equipment Ad
25 Valorem Tax Act;

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1 (10) Copper Production Ad Valorem Tax Act;
2 (11) any advance payment required to be made
3 by any act specified in this subsection, which advance payment
4 shall be considered a tax for the purposes of the Tax
5 Administration Act;

6 (12) Enhanced Oil Recovery Act;

7 (13) Natural Gas and Crude Oil Production
8 Incentive Act; and

9 (14) intergovernmental production tax credit
10 and intergovernmental production equipment tax credit;

11 C. the administration and enforcement of the
12 following taxes, surcharges, fees or acts as they now exist or
13 may hereafter be amended:

14 (1) Weight Distance Tax Act;

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

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

19 (4) 911 emergency surcharge and the network
20 and database surcharge, which surcharges shall be considered
21 taxes for purposes of the Tax Administration Act;

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

25 (6) the water conservation fee imposed by

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1 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
2 for the purposes of the Tax Administration Act; ~~and~~

3 (7) the gaming tax imposed pursuant to the
4 Gaming Control Act; and

5 (8) the state fair surcharge, which surcharge
6 shall be considered a tax for purposes of the Tax
7 Administration Act; and

8 D. the administration and enforcement of all other
9 laws, with respect to which the department is charged with
10 responsibilities pursuant to the Tax Administration Act, but
11 only to the extent that the other laws do not conflict with the
12 Tax Administration Act."

13 SECTION 2. A new section of the Tax Administration Act is
14 enacted to read:

15 "[NEW MATERIAL] TRANSFER--STATE FAIR SURCHARGE.--A
16 transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to
17 the state fair commission in an amount equal to the net
18 receipts attributable to the state fair surcharge."

19 SECTION 3. A new section of the Gross Receipts and
20 Compensating Tax Act is enacted to read:

21 "[NEW MATERIAL] EXEMPTION--GROSS RECEIPTS TAX AND
22 GOVERNMENTAL GROSS RECEIPTS TAX--STATE FAIR SURCHARGE.--
23 Exempted from the gross receipts tax and from the governmental
24 gross receipts tax are the receipts from selling tickets,
25 parking, souvenirs, concessions, programs, advertising,

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1 merchandise and corporate suites or boxes; broadcast revenues;
2 and all other products, services or activities sold at, related
3 to or occurring at the state fairgrounds on which a state fair
4 surcharge is imposed pursuant to the State Fair Funding Act."

5 SECTION 4. [NEW MATERIAL] SHORT TITLE.--Sections 4
6 through 10 of this act may be cited as the "State Fair Funding
7 Act".

8 SECTION 5. [NEW MATERIAL] DEFINITIONS.--As used in the
9 State Fair Funding Act:

10 A. "event center" means an event center located in
11 the exposition center that provides seating for ten to fifteen
12 thousand people and includes land, buildings and related
13 improvements that are primarily designed and intended for
14 cultural, educational, entertainment and sporting events, but
15 does not include a civic or convention center;

16 B. "state fair commission" means the state fair
17 commission whose members are appointed by the governor pursuant
18 to Section 16-6-1 NMSA 1978;

19 C. "state fairgrounds" means real or personal
20 property located on land owned by the state, commonly known as
21 the "state fairgrounds", within the exterior boundaries of the
22 city of Albuquerque;

23 D. "vendor" means every person, corporation,
24 partnership or other entity, including a division or department
25 of the state or a political subdivision of the state, providing

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1 products or services sold at or related to the state
2 fairgrounds; and

3 E. "vendor contract" means a contract, agreement or
4 other written arrangement between the state fair commission and
5 a vendor pursuant to which the vendor provides products or
6 services sold at or related to the state fairgrounds, including
7 tickets, parking, souvenirs, concessions, programs,
8 advertising, merchandise, corporate suites or boxes and
9 broadcast revenues.

10 SECTION 6. [NEW MATERIAL] AUTHORIZATION OF SURCHARGE--USE
11 OF PROCEEDS.--

12 A. There is imposed a surcharge of six and five-
13 sixteenths percent of each vendor contract entered into by the
14 state fair commission. The surcharge imposed pursuant to this
15 section may be referred to as the "state fair surcharge".

16 B. The state fair commission shall include the
17 state fair surcharge in the terms of each vendor contract into
18 which it enters. The chair of the state fair commission shall
19 sign each vendor contract into which the commission enters.

20 C. The state fair commission shall establish a fund
21 for deposit of all state fair surcharge proceeds transferred to
22 the commission pursuant to Section 2 of this 2016 act. Money
23 in the fund shall be used as determined by the state fair
24 commission and in accordance with Sections 16-6-13 through
25 16-6-22 NMSA 1978; provided that money in the fund:

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1 (1) shall first be used to pay the costs of
2 constructing, renovating, equipping or maintaining an event
3 center and related event center improvements or to pay debt
4 service payments on bonds secured for the same purposes; and

5 (2) shall not be used to benefit land, or any
6 buildings, improvements or personal property located on the
7 land, that is leased to or under the direct control of a person
8 licensed as a racetrack licensee pursuant to the Horse Racing
9 Act or as a licensee pursuant to the Gaming Control Act.

10 SECTION 7. [NEW MATERIAL] COLLECTION OF STATE FAIR

11 SURCHARGE--REMITTANCE TO THE TAXATION AND REVENUE DEPARTMENT.--

12 Upon the sale of a product or service subject to the state fair
13 surcharge, a vendor shall collect the surcharge from the
14 purchaser of that product or service. The surcharge collected
15 shall be remitted monthly to the taxation and revenue
16 department, which shall administer and enforce collection of
17 the surcharge in accordance with the Tax Administration Act.

18 The surcharge shall be remitted to the department no later than
19 the twenty-fifth day of the month following the month in which
20 the surcharge was imposed. At that time, a return for the
21 preceding month shall be filed with the department in such form
22 as the department prescribes. A vendor required to file a
23 return shall deliver the return together with a remittance of
24 the amount of the surcharge payable to the department. The
25 vendor shall maintain a record of the amount of each surcharge

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1 collected for a period of three years after the time the
2 surcharges were collected.

3 SECTION 8. [NEW MATERIAL] AUDITS.--The state fair
4 commission shall provide a method to audit or otherwise ensure
5 that vendors subject to the state fair surcharge collect and
6 remit to the taxation and revenue department the full amount of
7 the surcharge receipts due to the state fair commission.

8 SECTION 9. [NEW MATERIAL] ENFORCEMENT--PENALTIES.--

9 A. An action to enforce the imposition and
10 collection of a state fair surcharge by a vendor may be brought
11 by the state fair commission.

12 B. A district court may issue an appropriate
13 judgment, order or remedy to enforce the provisions of a vendor
14 contract.

15 C. A judgment issued by a district court requiring
16 state fair surcharge receipts to be paid to the taxation and
17 revenue department by a vendor shall also award interest at an
18 annual rate of twelve percent on past due amounts, attorney
19 fees and costs to the state fair commission.

20 SECTION 10. [NEW MATERIAL] ISSUANCE OF BONDS.--

21 A. The state fair commission may issue revenue
22 bonds, in accordance with the procedures set forth in Sections
23 16-6-16 through 16-6-22 NMSA 1978 and Section 6 of this 2016
24 act.

25 B. Revenue bonds issued by the state fair

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1 commission may be secured by state fair surcharge receipts.

2 C. An action shall not be brought questioning the
3 legality of the pledge of state fair surcharge receipts bonds
4 issued pursuant to the State Fair Funding Act, issuance of
5 those bonds, a state fair surcharge included in a vendor
6 contract or any other matter concerning the bonds after thirty
7 days from the date of publication of the state board of finance
8 authorizing issuance of the bonds and the pledging of state
9 fair surcharge receipts to make debt service payments.

10 D. The legislature shall not repeal, amend or
11 otherwise modify any law or ordinance that adversely affects or
12 impairs the state fair surcharge or any bonds secured by a
13 pledge of the state fair surcharge receipts unless the bonds
14 have been paid in full or provisions have been made for full
15 payment.

16 SECTION 11. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2016.