

1 SENATE BILL 265

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 John M. Sapien

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10 AN ACT

11 RELATING TO TRANSPORTATION; PROVIDING FOR AGREEMENTS FOR A
12 RENTAL CAR COMPANY OR A PEER-TO-PEER VEHICLE SHARING PROGRAM TO
13 OPERATE AT A MUNICIPAL AIRPORT FACILITY; DESIGNATING THE
14 REPORTING LOCATION FOR GROSS RECEIPTS AND DEDUCTIONS OF A PEER-
15 TO-PEER VEHICLE SHARING PROGRAM OR PEER-TO-PEER VEHICLE OWNER;
16 AMENDING SECTIONS OF THE LEASED VEHICLE GROSS RECEIPTS TAX ACT;
17 REPEALING THE LEASED VEHICLE SURCHARGE.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 3-39-1 NMSA 1978 (being Laws 1965,
21 Chapter 300, Section 14-40-1) is amended to read:

22 "3-39-1. MUNICIPAL AIRPORT LAW.--Sections [~~14-40-1~~
23 ~~through 14-40-13 New Mexico Statutes Annotated, 1953~~
24 ~~Compilation~~] 3-39-1 through 3-39-15 NMSA 1978 may be cited as
25 the "Municipal Airport Law"."

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1 SECTION 2. Section 3-39-3 NMSA 1978 (being Laws 1965,
2 Chapter 300, Section 14-40-3, as amended) is repealed and a new
3 Section 3-39-3 NMSA 1978 is enacted to read:

4 "3-39-3. [NEW MATERIAL] DEFINITIONS.--As used in the
5 Municipal Airport Law:

6 A. "airport facility" includes a runway, taxiway,
7 terminal, real estate, parking facility, hangar facility,
8 maintenance facility for repair, construction and modification
9 and any other facility related to aircraft or airports;

10 B. "bond" means any bond, note, temporary bond,
11 interim certificate, negotiable instrument or any other
12 evidence of indebtedness issued under the Municipal Airport
13 Law;

14 C. "federal government" means the United States or
15 any of its agencies;

16 D. "obligee" means any bondholder, trustee for any
17 bondholders or lessor, or the bondholder's, trustee's or
18 lessor's assignee, of property leased to the municipality for
19 use in connection with an airport facility and the state or
20 federal government when a party to a contract with the
21 municipality by which aid is given to the municipality;

22 E. "peer-to-peer vehicle" means a personal motor
23 vehicle that is available for use through a peer-to-peer
24 vehicle sharing program for a sharing period of thirty days or
25 less that is registered as a private passenger vehicle pursuant

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1 to the laws of this or another state;

2 F. "peer-to-peer vehicle owner" means the
3 registered owner of a peer-to-peer vehicle made available for
4 peer-to-peer vehicle sharing facilitated by a peer-to-peer
5 vehicle sharing program;

6 G. "peer-to-peer vehicle sharing" means the
7 authorized use of a peer-to-peer vehicle by an individual other
8 than a peer-to-peer vehicle owner through a peer-to-peer
9 vehicle sharing program;

10 H. "peer-to-peer vehicle sharing program" means a
11 person or entity that connects peer-to-peer vehicle owners with
12 drivers to facilitate the sharing of peer-to-peer vehicles for
13 consideration. A peer-to-peer vehicle sharing program is not a
14 transportation network company as defined in the Transportation
15 Network Company Services Act;

16 I. "peer-to-peer vehicle sharing start time" means
17 the time when a peer-to-peer vehicle becomes subject to the
18 control of a driver at or after the time the reservation of
19 peer-to-peer vehicle sharing is scheduled to begin as
20 documented in the records of a peer-to-peer vehicle sharing
21 program;

22 J. "rental car" means a motor vehicle that is
23 intended to be rented or leased for a period of ninety
24 consecutive days or less by a driver who is not required to
25 possess a commercial driver's license to operate the motor

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1 vehicle and the motor vehicle is one of the following:

2 (1) a private passenger motor vehicle,
3 including a passenger van, minivan or sports utility vehicle;
4 or

5 (2) a cargo vehicle, including a cargo van,
6 pickup truck or truck with a gross vehicle weight of less than
7 twenty-six thousand pounds; and

8 K. "rental car company" means a person in the
9 business of renting rental cars to the public, including a
10 franchise. "Rental car company" does not include a peer-to-
11 peer vehicle owner who makes no more than three motor vehicles
12 available for peer-to-peer vehicle sharing through a
13 peer-to-peer vehicle sharing program, or combination of
14 programs, during a twelve-month period."

15 SECTION 3. A new section of the Municipal Airport Law is
16 enacted to read:

17 "[NEW MATERIAL] AGREEMENTS FOR A RENTAL CAR COMPANY OR A
18 PEER-TO-PEER VEHICLE SHARING PROGRAM TO OPERATE AT A MUNICIPAL
19 AIRPORT FACILITY.--

20 A. A peer-to-peer vehicle sharing program, a peer-
21 to-peer vehicle owner or a rental car company, upon request of
22 the governing body of a municipality operating an airport
23 facility, shall enter into an agreement, which may be a
24 concession agreement, prior to:

25 (1) listing, publishing information about or

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1 advertising a peer-to-peer vehicle or a rental car parked at or
2 on an airport facility;

3 (2) facilitating the use of a peer-to-peer
4 vehicle or a rental car to transport airport customers to or
5 from airport facilities, regardless of whether that use is to be
6 initiated or has a peer-to-peer vehicle sharing start time that
7 occurs on or off of the airport facility; or

8 (3) promoting or marketing a peer-to-peer
9 vehicle or a rental car to transport airport customers to or
10 from the airport facility, regardless of whether that
11 transportation is to be initiated or has a peer-to-peer vehicle
12 sharing start time that occurs on or off of the airport
13 facility.

14 B. The agreement described in Subsection A of this
15 section shall set forth reasonable standards, rules, procedures
16 and fees applicable to a peer-to-peer vehicle sharing program,
17 peer-to-peer vehicle sharing or a rental car company and based
18 on current standards, rules, procedures and fees at similarly
19 sized airports and population areas in the United States.

20 C. If a peer-to-peer vehicle sharing program, a
21 peer-to-peer vehicle owner or a rental car company fails or
22 refuses to enter into an agreement described in Subsection A of
23 this section after a request by the governing body of a
24 municipality operating an airport facility or performs,
25 participates in or undertakes any of the actions set forth in

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1 Subsection A of this section before entering into an agreement
2 after a request to do so, the affected municipality may seek an
3 injunction prohibiting operations at the airport facility and
4 may seek damages against the peer-to-peer vehicle sharing
5 program, peer-to-peer vehicle owner or rental car company."

6 SECTION 4. Section 7-1-14 NMSA 1978 (being Laws 1969,
7 Chapter 145, Section 1, as amended) is amended to read:

8 "7-1-14. SECRETARY MAY DETERMINE WHERE CERTAIN GROSS
9 RECEIPTS ARE TO BE REPORTED--PLACE OF BUSINESS FOR CONSTRUCTION
10 PROJECTS AND CERTAIN REAL PROPERTY SALES--LOCATION WHERE GROSS
11 RECEIPTS AND DEDUCTIONS FROM CERTAIN VEHICLE-USE SERVICES ARE TO
12 BE REPORTED.--

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

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

22 C. The secretary may, by regulation, also require
23 any person maintaining a business outside the boundaries of a
24 municipality on land owned by that municipality to report the
25 person's taxable gross receipts for that municipality.

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

5 E. The reporting location for gross receipts and
6 deductions from a customer for services provided by a peer-to-
7 peer vehicle owner or a peer-to-peer vehicle sharing program
8 shall be the location where the customer begins the use of the
9 peer-to-peer vehicle. As used in this subsection:

10 (1) "peer-to-peer vehicle" means a personal
11 motor vehicle that is available for use through a peer-to-peer
12 vehicle sharing program for a sharing period of thirty days or
13 less that is registered as a private passenger vehicle pursuant
14 to the laws of this or another state;

15 (2) "peer-to-peer vehicle owner" means the
16 registered owner of a peer-to-peer vehicle made available for
17 peer-to-peer vehicle sharing facilitated by a peer-to-peer
18 vehicle sharing program; and

19 (3) "peer-to-peer vehicle sharing program"
20 means a person or entity that connects peer-to-peer vehicle
21 owners with drivers to facilitate the sharing of peer-to-peer
22 vehicles for consideration."

23 **SECTION 5.** That version of Section 7-1-14 NMSA 1978
24 (being Laws 2019, Chapter 270, Section 11) that is to become
25 effective July 1, 2021 is amended to read:

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1 "7-1-14. LOCATION WHERE CERTAIN GROSS RECEIPTS ARE TO BE
2 REPORTED--LOCATION FOR TRANSACTIONS SUBJECT TO THE COMPENSATING
3 TAX.--

4 A. Gross receipts and deductions required to be
5 reported pursuant to the Gross Receipts and Compensating Tax Act
6 or any act that imposes a state or local gross receipts or
7 compensating tax shall be reported as follows:

8 (1) gross receipts and deductions from the
9 sale or lease of tangible personal property or licenses and from
10 the licensing of tangible personal property shall be reported to
11 the location of delivery of that tangible personal property to
12 the customer; provided that the reporting location for receipts
13 from leasing a vehicle is the location where the customer first
14 makes use of the vehicle;

15 (2) except as otherwise provided in this
16 section, a seller of services shall report the seller's gross
17 receipts and deductions as follows:

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

20 (b) for a person engaged in the
21 construction business, the location where the construction
22 project is performed is the "place of business", and all gross
23 receipts and deductions from that project are to be reported
24 from that place of business;

25 (c) for a person engaged in the business

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1 of providing services with respect to the selling of real
2 estate, the location of the real property is the "place of
3 business", and all gross receipts and deductions from that sale
4 are to be reported from that place of business; and

5 (d) services, other than those described
6 in Subparagraphs (a) through (c) of this paragraph, are to be
7 reported at the location where the service is performed;

8 (3) gross receipts and deductions from the
9 sale, lease or granting of a license to use real property shall
10 be reported to the location of the real property; ~~and~~

11 (4) the reporting location for gross receipts
12 and deductions from a customer for services provided by a
13 transportation network company pursuant to the Transportation
14 Network Company Services Act shall be the location where the
15 customer enters the vehicle offered for a prearranged ride; and

16 (5) the reporting location for gross receipts
17 and deductions from a customer for services provided by a
18 peer-to-peer vehicle owner or a peer-to-peer vehicle sharing
19 program shall be the location where the customer begins the use
20 of the peer-to-peer vehicle. As used in this paragraph:

21 (a) "peer-to-peer vehicle" means a
22 personal motor vehicle that is available for use through a peer-
23 to-peer vehicle sharing program for a sharing period of thirty
24 days or less that is registered as a private passenger vehicle
25 pursuant to the laws of this or another state;

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1 (b) "peer-to-peer vehicle owner" means
2 the registered owner of a peer-to-peer vehicle made available
3 for peer-to-peer vehicle sharing facilitated by a peer-to-peer
4 vehicle sharing program; and

5 (c) "peer-to-peer vehicle sharing
6 program" means a person or entity that connects peer-to-peer
7 vehicle owners with drivers to facilitate the sharing of peer-
8 to-peer vehicles for consideration.

9 B. Consistent with this section and with
10 intergovernmental agreements, the secretary may, by rule,
11 provide for the reporting of gross receipts and deductions from
12 transactions not otherwise specified in this section, including
13 reporting gross receipts and deductions to locations:

14 (1) by taxpayers having more than one place of
15 business; and

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

18 (a) outside a municipality;

19 (b) within an Indian reservation or
20 pueblo grant;

21 (c) within a tax increment development
22 district; and

23 (d) within any other taxing jurisdiction.

24 C. Values from transactions subject to the
25 compensating tax shall be reported consistent with Subsections A

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1 and B of this section unless the taxpayer can demonstrate that
2 the taxable use in New Mexico first occurred after the purchase,
3 lease, license or other transaction giving rise to that value
4 and that the first taxable use occurred in another location
5 within the state.

6 D. The secretary shall develop and provide to
7 taxpayers a location-rate database that sets out the tax rates
8 applicable to locations within the state, by address, and
9 sellers who properly rely on this database shall not be liable
10 for any additional tax due to the use of an incorrect rate."

11 SECTION 6. Section 7-14A-4 NMSA 1978 (being Laws 1991,
12 Chapter 197, Section 8, as amended) is amended to read:

13 "7-14A-4. PRESUMPTION OF TAXABILITY.--To prevent evasion
14 of the leased vehicle gross receipts tax [~~and the leased vehicle~~
15 ~~surcharge~~] and to aid in [~~their~~] its administration, it is
16 presumed that all receipts of a person engaging in business are
17 subject to the leased vehicle gross receipts tax [~~and that all~~
18 ~~vehicles leased by that person are subject to the leased vehicle~~
19 ~~surcharge~~]."

20 SECTION 7. Section 7-14A-6 NMSA 1978 (being Laws 1991,
21 Chapter 197, Section 10, as amended) is amended to read:

22 "7-14A-6. DATE PAYMENT DUE.--The tax [~~and the surcharge~~]
23 imposed by the Leased Vehicle Gross Receipts Tax Act [~~are~~] is to
24 be paid on or before the twenty-fifth day of the month following
25 the month in which the taxable event occurs."

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SECTION 8. Section 7-14A-11 NMSA 1978 (being Laws 1991,
Chapter 197, Section 15, as amended) is amended to read:

"7-14A-11. ADMINISTRATION.--

A. The department shall interpret the provisions of
the Leased Vehicle Gross Receipts Tax Act.

B. The department shall administer and enforce the
collection of the leased vehicle gross receipts tax [~~and the
leased vehicle surcharge~~] and the Tax Administration Act applies
to the administration and enforcement of the tax [~~and the
surcharge~~]."

SECTION 9. REPEAL.--Section 7-14A-3.1 NMSA 1978 (being
Laws 1993, Chapter 359, Section 1, as amended) is repealed.

SECTION 10. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2020.