

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 276

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

AN ACT

RELATING TO TAXATION; ADJUSTING DISTRIBUTIONS AND AMOUNTS IN
REGARD TO THE SMALL CITIES ASSISTANCE FUND AND THE SMALL
COUNTIES ASSISTANCE FUND; CLARIFYING CERTAIN GROSS RECEIPTS
DEDUCTIONS FOR CONSTRUCTION-RELATED EXPENDITURES; EXPANDING A
GROSS RECEIPTS DEDUCTION FOR MANUFACTURING CONSUMABLES.

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

SECTION 1. Section 3-37A-2 NMSA 1978 (being Laws 1979,
Chapter 284, Section 2, as amended) is amended to read:

"3-37A-2. DEFINITIONS.--As used in the Small Cities
Assistance Act:

A. "municipality" means an incorporated city, town
or village, whether incorporated under general act, special act
or special charter, and incorporated counties and H-class
counties;

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underscored material = new
[bracketed material] = delete

1 B. "municipal share" means one and thirty-five one-
2 hundredths percent of the taxable gross receipts as defined in
3 the Gross Receipts and Compensating Tax Act reported annually
4 for each municipality to the taxation and revenue department
5 during a twelve-month period ending June 30;

6 C. "total municipal share" means the sum of all
7 municipal shares;

8 D. "statewide per capita average" means the
9 quotient of the total municipal share divided by the total
10 population in all municipalities;

11 E. "municipal per capita average" means the
12 quotient of the municipal share divided by the municipality's
13 population;

14 F. "population" means the most recent official
15 census or estimate determined by the bureau of the census, or,
16 if neither is available, "population" means an estimate as
17 determined by the local government division of the department
18 of finance and administration;

19 G. "local tax effort" means the amount produced by
20 a one-fourth of one percent municipal gross receipts tax in the
21 previous fiscal year;

22 H. "qualifying municipality" means a municipality
23 with a population of less than ten thousand that has enacted on
24 or before the last day of the preceding fiscal year an
25 ordinance or ordinances imposing a municipal gross receipts tax

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1 pursuant to Section 7-19D-9 NMSA 1978 at a rate of one-fourth
2 of one percent or more;

3 I. "enacted" means adopted by a majority of the
4 members of the governing body of the municipality pursuant to
5 Section 7-19D-9 NMSA 1978 and:

6 (1) for which no election has been called in
7 the manner and within the time provided by Section 7-19D-9 NMSA
8 1978; or

9 (2) that has been approved by a majority of
10 the registered voters voting on the question pursuant to
11 Section 7-19D-9 NMSA 1978; and

12 J. "minimum amount" means an amount equal to
13 [~~thirty-five thousand dollars (\$35,000)~~] ninety thousand
14 dollars (\$90,000)."

15 SECTION 2. Section 4-61-3 NMSA 1978 (being Laws 1982,
16 Chapter 44, Section 3, as amended) is amended to read:

17 "4-61-3. SMALL COUNTIES ASSISTANCE FUND--
18 DISTRIBUTION.--

19 A. The "small counties assistance fund" is created
20 within the state treasury.

21 B. On or before September 1, 2003 and on or before
22 September 1 of each subsequent year, the demographer shall
23 certify in writing to the department of finance and
24 administration the population of the state and of each county
25 as of June 30 of the year.

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1 C. On or before September 15, 2003 and on or before
2 September 15 of each subsequent year, the secretary of finance
3 and administration shall certify to the state treasurer with
4 respect to each qualifying county:

5 (1) its population as certified by the
6 demographer;

7 (2) its total valuation for the preceding
8 property tax year; and

9 (3) the distribution amount calculated for it.

10 D. The distribution amount for each qualifying
11 county shall be determined for 2003 and each subsequent year
12 in accordance with the following table; provided that the
13 bracket amounts in the first two columns of the table shall
14 be adjusted annually after 2003 by the adjustment factor.
15 The bracket amounts in the last column shall be adjusted
16 annually after 2005 by the inflation factor and, in 2011 and
17 subsequent years, shall be adjusted by the tax rate factor.
18 The department of finance and administration may round the
19 results of the adjustments made pursuant to this subsection
20 to the nearest one thousand dollars (\$1,000).

21 If the county's total valuation for the preceding
22 property tax year is:

23	at least:	but less	and the county	then the distribution
24		than:	population is:	amount is:
25	\$ 0	\$100,000,000	under 1,000	[\$450,000] <u>\$515,000</u>

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1	\$	0	\$100,000,000	at least 1,000		
2				but under 4,000	[\$325,000]	<u>\$370,000</u>
3	\$	0	\$100,000,000	at least 4,000	[\$250,000]	<u>\$285,000</u>
4	\$100,000,000	\$230,000,000		under 12,000	[\$175,000]	<u>\$200,000</u>
5	\$100,000,000	\$230,000,000		at least 12,000	[\$125,000]	<u>\$145,000</u>
6	\$230,000,000	\$1,400,000,000		under 48,000	[\$75,000]	<u>\$85,000.</u>

7 E. If the balance in the small counties
8 assistance fund as of the preceding August 31 exceeds the sum
9 of the distributions to be made to qualifying counties
10 pursuant to the provisions of Subsection D of this section,
11 the department of finance and administration shall increase
12 the distribution amount for each county receiving a
13 distribution amount pursuant to the provisions of Subsection
14 D of this section by:

15 (1) [~~thirty-five thousand dollars (\$35,000)]~~
16 fifty thousand dollars (\$50,000) if the county has imposed
17 and has in effect on July 1 of the year in which the
18 distribution is to be made a county correctional facility
19 gross receipts tax at a rate of at least one-eighth percent;

20 (2) [~~fifteen thousand dollars (\$15,000)]~~
21 twenty thousand dollars (\$20,000) if the county has imposed
22 and has in effect on July 1 of the year in which the
23 distribution is to be made a county gross receipts tax
24 increment of one-sixteenth percent; or

25 (3) [~~fifty thousand dollars (\$50,000)]~~

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1 seventy thousand dollars (\$70,000) if the county has met the
2 requirements of Paragraphs (1) and (2) of this subsection.

3 F. If the balance in the small counties
4 assistance fund as of the preceding August 31 is less than
5 the sum of the distributions determined pursuant to
6 Subsection D of this section plus the distribution increases
7 authorized pursuant to Subsection E of this section, the
8 distribution increases pursuant to Subsection E of this
9 section shall be proportionately reduced.

10 G. If the balance in the small counties
11 assistance fund as of the preceding August 31 is less than
12 the sum of the distributions to be made to qualifying
13 counties, the department of finance and administration shall
14 reduce each qualifying county's calculated distribution by a
15 percentage computed by dividing the amount by which the fund
16 is insufficient by the sum of all the calculated
17 distributions and shall certify the reduced amounts as the
18 qualifying counties' distributions.

19 H. Any interest accruing from the temporary
20 investment of the small counties assistance fund shall be
21 credited to the general fund.

22 I. On or before September 30, 2003 and on or
23 before September 30 of each subsequent year, the state
24 treasurer shall distribute to each county for whom a
25 distribution has been certified for that year the amount

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1 certified for that county for that year. If the balance in
 2 the fund as of the preceding August 31 exceeds the sum of
 3 certified amounts distributed, the difference shall revert to
 4 the general fund.

5 J. If any date specified in Subsection B, C or I
 6 of this section falls on a Saturday, Sunday or legal holiday,
 7 any action required to be performed as provided in those
 8 subsections is timely if performed on the next day that is
 9 not a Saturday, Sunday or legal holiday."

10 SECTION 3. Section 7-1-6.2 NMSA 1978 (being Laws 1983,
 11 Chapter 211, Section 7, as amended) is amended to read:

12 "7-1-6.2. DISTRIBUTION--SMALL CITIES ASSISTANCE FUND.--
 13 A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
 14 made to the small cities assistance fund in an amount equal
 15 to [~~ten~~] fifteen percent of the net receipts attributable to
 16 the compensating tax."

17 SECTION 4. Section 7-9-46 NMSA 1978 (being Laws 1969,
 18 Chapter 144, Section 36, as amended) is amended to read:

19 "7-9-46. DEDUCTION--GROSS RECEIPTS TAX--GOVERNMENTAL
 20 GROSS RECEIPTS--SALES TO MANUFACTURERS.--

21 A. Receipts from selling tangible personal
 22 property may be deducted from gross receipts or from
 23 governmental gross receipts if the sale is made to a person
 24 engaged in the business of manufacturing who delivers a
 25 nontaxable transaction certificate to the seller. The buyer

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1 delivering the nontaxable transaction certificate must
2 incorporate the tangible personal property as an ingredient
3 or component part of the product that ~~he~~ the buyer is in
4 the business of manufacturing.

5 B. Receipts from selling tangible personal
6 property that is used in such a way that it is consumed in
7 the manufacturing process of a product, provided that the
8 tangible personal property is not a tool or equipment used to
9 create the manufactured product, to a person engaged in the
10 business of manufacturing that product and who delivers a
11 nontaxable transaction certificate to the seller may be
12 deducted in the following percentages from gross receipts or
13 from governmental gross receipts:

14 (1) twenty percent of receipts received
15 prior to January 1, 2014;

16 (2) forty percent of receipts received in
17 calendar year 2014;

18 (3) sixty percent of receipts received in
19 calendar year 2015;

20 (4) eighty percent of receipts received in
21 calendar year 2016; and

22 (5) one hundred percent of receipts received
23 on or after January 1, 2017.

24 C. The purpose of the deductions provided in this
25 section is to encourage manufacturing businesses to locate in

1 New Mexico and to reduce the tax burden, including reducing
 2 pyramiding, on the tangible personal property that is
 3 consumed in the manufacturing process and that is purchased
 4 by manufacturing businesses in New Mexico.

5 D. The department shall annually report to the
 6 revenue stabilization and tax policy committee the aggregate
 7 amount of deductions taken pursuant to this section, the
 8 number of taxpayers claiming each of the deductions and any
 9 other information that is necessary to determine that the
 10 deductions are performing the purposes for which they are
 11 enacted.

12 E. A taxpayer deducting gross receipts pursuant
 13 to this section shall report the amount deducted separately
 14 for each deduction provided in this section and attribute the
 15 amount of the deduction to the appropriate authorization
 16 provided in this section in a manner required by the
 17 department that facilitates the evaluation by the legislature
 18 of the benefit to the state of these deductions."

19 **SECTION 5.** Section 7-9-52 NMSA 1978 (being Laws 1969,
 20 Chapter 144, Section 42, as amended by Laws 2000, Chapter 84,
 21 Section 4 and also by Laws 2000, Chapter 98, Section 2) is
 22 amended to read:

23 "7-9-52. DEDUCTION--GROSS RECEIPTS TAX--SALE OF
 24 CONSTRUCTION SERVICES AND CONSTRUCTION-RELATED SERVICES TO
 25 PERSONS ENGAGED IN THE CONSTRUCTION BUSINESS.--

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

7 B. The buyer delivering the nontaxable
8 transaction certificate [~~must~~] shall have the construction
9 services [~~performed upon~~] or construction-related services
10 directly contracted for or billed to:

11 (1) a construction project [~~which~~] that is
12 subject to the gross receipts tax upon its completion or upon
13 the completion of the overall construction project of which
14 it is a part;

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

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

21 C. As used in this section, "construction-related
22 service" means a service directly contracted for or billed to
23 a specific construction project, including design,
24 architecture, drafting, surveying, engineering, environmental
25 and structural testing, security, sanitation and services

1 required to comply with governmental construction-related
 2 regulations; but "construction-related service" excludes
 3 general business services such as legal or accounting
 4 services, equipment maintenance and real estate sales
 5 commissions."

6 SECTION 6. A new section of the Gross Receipts and
 7 Compensating Tax Act is enacted to read:

8 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--LEASE OF
 9 CONSTRUCTION EQUIPMENT TO PERSONS ENGAGED IN THE CONSTRUCTION
 10 BUSINESS.--

11 A. Receipts from leasing construction equipment
 12 may be deducted from gross receipts if the construction
 13 equipment is leased to a person engaged in the construction
 14 business who delivers a nontaxable transaction certificate to
 15 the person leasing the construction equipment.

16 B. The lessee delivering the nontaxable
 17 transaction certificate shall only use the construction
 18 equipment at the construction location of:

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

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

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1 constructed; or

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

4 C. As used in this section, "construction
5 equipment" means equipment used on a construction project,
6 including trash containers, portable toilets, scaffolding and
7 temporary fencing."

8 SECTION 7. APPLICABILITY.--The distribution pursuant to
9 Section 3 of this act applies to receipts from compensating
10 taxes that are attributable to sales on or after January 1,
11 2013.

12 SECTION 8. EFFECTIVE DATE.--

13 A. The effective date of the provisions of
14 Sections 3 through 6 of this act is January 1, 2013.

15 B. The effective date of the provisions of
16 Section 2 of this act is July 1, 2013.

17 C. The effective date of the provisions of
18 Section 1 of this act is January 1, 2014.