

1 SENATE BILL 63

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

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO TAXATION; AUTHORIZING MUNICIPALITIES AND COUNTIES  
12 TO IMPOSE A TENANCY TAX; PROVIDING FOR LOCAL CONTROL OF  
13 ELIGIBLE USES FOR THE TENANCY TAX REVENUE.

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

16 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
17 cited as the "Tenancy Tax Act".

18 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
19 Tenancy Tax Act:

20 A. "gross taxable rent" means the total amount of  
21 rent paid for lodging, not including state or local gross  
22 receipts taxes;

23 B. "lodging" means the transaction of furnishing  
24 rooms or other accommodations by a vendor to a vendee who for  
25 rent uses, possesses or has the right to use or possess the

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1 rooms or other accommodations in or at a taxable premises;

2 C. "lodgings" means the rooms or other  
3 accommodations furnished by a vendor to a vendee;

4 D. "rent" means the consideration received by a  
5 vendor in money, credits, property or other consideration  
6 valued in money for lodgings;

7 E. "taxable premises" means housing premises used  
8 for lodging, including a hotel, motel, lodging house, rooming  
9 house, motor hotel, guest house, mobile home, motor court, auto  
10 court, auto camp, trailer court, trailer camp, trailer park,  
11 tourist camp or recreational vehicle park;

12 F. "vendee" means a natural person to whom lodgings  
13 are furnished; and

14 G. "vendor" means a person or the person's agent  
15 furnishing lodgings.

16 SECTION 3. [NEW MATERIAL] AUTHORITY TO IMPOSE TAX--  
17 LIMITATIONS ON USE OF PROCEEDS.--

18 A. A municipality may impose by ordinance a tenancy  
19 tax for revenues on lodging within the municipality, and the  
20 board of county commissioners of a county may impose by  
21 ordinance a tenancy tax for revenues on lodging within that  
22 part of the county outside of the incorporated limits of a  
23 municipality. The tax imposed pursuant to this section shall  
24 be referred to as the "tenancy tax".

25 B. The tenancy tax shall not exceed five percent of  
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1 the gross taxable rent.

2 C. A vendor who is furnishing lodgings within a  
3 municipality or county is exercising a taxable privilege.

4 D. The proceeds from the tenancy tax shall be used  
5 only for the purposes stated in the ordinance by which the tax  
6 is authorized.

7 SECTION 4. [NEW MATERIAL] EXEMPTIONS.--The tenancy tax  
8 shall not apply:

9 A. if a vendee has manifested an intent to make the  
10 taxable premises a residence or household;

11 B. if a vendee provides proof to a vendor that the  
12 vendee's income is below one hundred eighty-five percent of the  
13 federal poverty guidelines;

14 C. for the first thirty days that the vendee rents  
15 the taxable premises;

16 D. to lodging accommodations at institutions of the  
17 federal government, the state or any political subdivision  
18 thereof;

19 E. to lodging accommodations at religious,  
20 charitable, educational or philanthropic institutions,  
21 including accommodations at summer camps operated by such  
22 institutions;

23 F. to clinics, hospitals or other medical  
24 facilities; or

25 G. to privately owned and operated convalescent

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1 homes or homes for the aged, infirm, indigent or chronically  
2 ill.

3 SECTION 5. [NEW MATERIAL] COLLECTION OF TAXES.--

4 A. Every vendor providing lodgings in a  
5 municipality or county imposing a tenancy tax shall collect the  
6 proceeds of the tax on behalf of the municipality or county and  
7 shall act as a trustee of the proceeds.

8 B. The tax shall be collected from vendees in  
9 accordance with the ordinance imposing the tax and shall be  
10 charged separately from the rent fixed by the vendor for the  
11 lodgings.

12 SECTION 6. [NEW MATERIAL] AUDIT OF VENDORS.--The  
13 governing body of any municipality or county collecting tenancy  
14 tax proceeds shall select for annual random audits one or more  
15 vendors to verify the amount of gross taxable rent subject to  
16 the tenancy tax and to ensure that the full amount of tenancy  
17 tax on that rent is collected. Copies of audits completed  
18 shall be filed annually with the local government division of  
19 the department of finance and administration.

20 SECTION 7. [NEW MATERIAL] ENFORCEMENT.--

21 A. An action to enforce the provisions of the  
22 Tenancy Tax Act may be brought by:

- 23 (1) the attorney general, the district  
24 attorney in the county of jurisdiction or the city attorney of  
25 the municipality; or

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1 (2) a vendor who is collecting the proceeds of  
2 a tenancy tax.

3 B. A district court may issue a writ of mandamus or  
4 order an injunction or other appropriate remedy to enforce the  
5 provisions of the Tenancy Tax Act.

6 C. The court shall award costs and reasonable  
7 attorney fees to the prevailing party in a court action to  
8 enforce the provisions of the Tenancy Tax Act.

9 SECTION 8. [NEW MATERIAL] LIEN FOR TENANCY TAX--PAYMENT--  
10 CERTIFICATE OF LIENS.--

11 A. A tenancy tax imposed by a municipality or  
12 county constitutes a lien in favor of that municipality or  
13 county upon the personal and real property of the vendor  
14 providing lodgings in that municipality or county. Priority of  
15 the lien shall be determined from the date of filing.

16 B. Under process or order of court, no person shall  
17 sell the property of any vendor without first ascertaining from  
18 the clerk or treasurer of the municipality or county in which  
19 the vendor is located the amount of any tenancy tax on that  
20 property due the municipality or county. Any tenancy tax due  
21 the municipality or county shall be paid from the proceeds of  
22 the sale before payment is made to the judgment creditor or any  
23 other person with a claim on the sale proceeds.

24 C. The clerk or treasurer of a municipality or  
25 county shall furnish to any person applying for such a

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1 certificate a certificate showing the amount of all liens in  
2 the records of the municipality or county against any vendor  
3 pursuant to the Tenancy Tax Act.

4 SECTION 9. [NEW MATERIAL] ORDINANCE REQUIREMENTS.--An  
5 ordinance imposing a tenancy tax or any ordinance amendatory  
6 thereof or supplemental to that ordinance, except as limited by  
7 or otherwise provided in the Tenancy Tax Act, shall:

8 A. state the rate or other amount of the tenancy  
9 tax; the times, place and method for the payment of the tenancy  
10 tax proceeds to the municipality or county; the accounts and  
11 other records to be maintained in connection with the tenancy  
12 tax; a procedure for making refunds and resolving disputes  
13 relating to the tenancy tax, including exemptions pertaining to  
14 the tax; the procedure for preservation and destruction of  
15 records and their inspection and investigation; vendor audit  
16 requirements; applicable civil and criminal penalties; and a  
17 procedure of liens, distraint and sales to satisfy liens;

18 B. state the purposes of the tenancy tax;

19 C. state the eligible uses of the tenancy tax  
20 revenue;

21 D. state the penalty for failure to comply with the  
22 Tenancy Tax Act; and

23 E. provide other rights, privileges, powers,  
24 immunities and other details relating to any vendor licenses,  
25 the collection of the tenancy tax and the remittance of the

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proceeds of the tax to the municipality or county.

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