The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 100

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 669, as amended

Introduced by
CHAPTER 100

AN ACT

RELATING TO TAXATION; CHANGING PROCEDURES FOR ADJUSTING
CERTAIN DISTRIBUTIONS AND TRANSFERS TO MUNICIPALITIES AND
COUNTIES; ALLOWING THE TAXATION AND REVENUE DEPARTMENT TO, IN
CERTAIN CIRCUMSTANCES, REVEAL TO LOCAL GOVERNMENTS A RANGE OF
GROSS RECEIPTS TAXES PAID BY TAXPAYERS FROM BUSINESS
LOCATIONS ATTRIBUTABLE TO THOSE LOCAL GOVERNMENTS.

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

SECTION 1. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
Chapter 211, Section 20, as amended) is amended to read:

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

A. The provisions of this section apply to:

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

(2) any transfer to a municipality with
respect to any local option gross receipts tax imposed by
that municipality;

(3) any transfer to a county with respect to
any local option gross receipts tax imposed by that county;

(4) any distribution to a county pursuant to
Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

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

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

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

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

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

B. Before making a distribution or transfer specified in Subsection A of this section to a municipality or county for the month, amounts comprising the net receipts shall be segregated into two mutually exclusive categories. One category shall be for amounts relating to the current month, and the other category shall be for amounts relating to prior periods. The total of each category for a municipality or county shall be reported each month to that municipality or county. If the total of the amounts relating to prior periods is less than zero and its absolute value exceeds the greater of one hundred dollars ($100) or an amount equal to twenty percent of the average distribution or transfer amount for that municipality or county, then the following procedures shall be carried out:
(1) all negative amounts relating to any period prior to the three calendar years preceding the year of the current month, net of any positive amounts in that same time period for the same taxpayers to which the negative amounts pertain, shall be excluded from the total relating to prior periods. Except as provided in Paragraph (2) of this subsection, the net receipts to be distributed or transferred to the municipality or county shall be adjusted to equal the amount for the current month plus the revised total for prior periods; and

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

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

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

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

(2) that the municipality or county has ninety days from the date notice is made to enter into a mutually agreeable repayment agreement with the department;

(3) that if the municipality or county takes no action within the ninety-day period, the department will recover the amount from the next six distributions or transfers following the expiration of the ninety days; and

(4) that the municipality or county may inspect, pursuant to Section 7-1-8.9 NMSA 1978, an application for a claim for refund that gave rise to the recoverable amount, exclusive of any amended returns that may be attached to the application.

E. No earlier than ninety days from the date notice pursuant to Subsection D of this section is given, the department shall begin recovering the recoverable amount from
a municipality or county as follows:

    (1) the department may collect the
recoverable amount by:

        (a) decreasing distributions or
transfers to the municipality or county in accordance with a
repayment agreement entered into with the municipality or
county; or

        (b) except as provided in Paragraphs
(2) and (3) of this subsection, if the municipality or county
fails to act within the ninety days, decreasing the amount of
the next six distributions or transfers to the municipality
or county following expiration of the ninety-day period in
increments as nearly equal as practicable and sufficient to
recover the amount;

    (2) if, pursuant to Subsection B of this
section, the secretary determines that the recoverable amount
is more than fifty percent of the average distribution or
transfer of net receipts for that municipality or county, the
secretary:

        (a) shall recover only up to fifty
percent of the average distribution or transfer of net
receipts for that municipality or county; and

        (b) may, in the secretary's discretion,
waive recovery of any portion of the recoverable amount,
subject to approval by the state board of finance; and
(3) if, after application of a refund claim, audit adjustment, correction of a mistake by the department or other adjustment of a prior period, but prior to any recovery of the department pursuant to this section, the total net receipts of a municipality or county for the twelve-month period beginning with the current month are reduced or are projected to be reduced to less than fifty percent of the average distribution or transfer of net receipts, the secretary may waive recovery of any portion of the recoverable amount, subject to approval by the state board of finance.

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

G. On or before September 1 of each year beginning in 2016, the secretary shall report to the state board of finance and the legislative finance committee the total recoverable amount waived pursuant to Subparagraph (b) of Paragraph (2) and Paragraph (3) of Subsection E of this section for each municipality and county in the prior fiscal year.
H. The secretary is authorized to decrease a distribution or transfer to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act or to redirect a distribution or transfer to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority. Upon direction to decrease a distribution or transfer or notice to redirect a distribution or transfer to a municipality or county, the secretary shall decrease or redirect the next designated distribution or transfer, and succeeding distributions or transfers as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or other person designated by the secretary of finance and administration or to the New Mexico finance authority pursuant to written agreement to pay the debt service to avoid default on qualified local revenue bonds or meet other local revenue bond, loan or other
debt obligations of the municipality or county to the New Mexico finance authority. A decrease to or redirection of a distribution or transfer pursuant to this subsection that arose:

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

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

I. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the secretary shall temporarily withhold the balance of a distribution to a municipality or county, net of any decrease or redirected amount pursuant to Subsection H of this section and any recoverable amount pursuant to Paragraph (2) of Subsection B of this section, that has failed to submit an audit report required by the Audit Act or a financial report.
required by Subsection F of Section 6-6-2 NMSA 1978. The amount to be withheld, the source of the withheld distribution and the number of months that the distribution is to be withheld shall be as directed by the secretary of finance and administration. A distribution withheld pursuant to this subsection shall remain in the tax administration suspense fund until distributed to the municipality or county and shall not be distributed to the general fund. An amount withheld pursuant to this subsection shall be distributed to the municipality or county upon direction of the secretary of finance and administration.

J. As used in this section:

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

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

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

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

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

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

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

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

SECTION 2. Section 7-1-8.9 NMSA 1978 (being Laws 2009,
Chapter 243, Section 11) is amended to read:

"7-1-8.9. INFORMATION THAT MAY BE REVEALED TO LOCAL
GOVERNMENTS AND THEIR AGENCIES.--

  A. An employee of the department may reveal to:
      (1) the officials or employees of a
      municipality of this state authorized in a written request by
      the municipality for a period specified in the request within
      the twelve months preceding the request; provided that the
      municipality receiving the information has entered into a
      written agreement with the department that the information
      shall be used for tax purposes only and specifying that the
      municipality is subject to the confidentiality provisions of
      Section 7-1-8 NMSA 1978 and the penalty provisions of Section
      7-1-76 NMSA 1978:

      (a) the names, taxpayer identification
numbers and addresses of registered gross receipts taxpayers
reporting gross receipts for that municipality under the
Gross Receipts and Compensating Tax Act or a local option
gross receipts tax imposed by that municipality. The
department may also reveal the information described in this
subparagraph quarterly or upon such other periodic basis as
the secretary and the municipality may agree in writing;

(b) a range of taxable gross receipts
of registered gross receipts paid by taxpayers from business
locations attributable to that municipality under the Gross
Receipts and Compensating Tax Act or a local option gross
receipts tax imposed by that municipality; provided that
authorization from the federal internal revenue service to
reveal such information has been received. The department
may also reveal the information described in this
subparagraph quarterly or upon such other periodic basis as
the secretary and the municipality may agree in writing; and

(c) information indicating whether
persons shown on a list of businesses located within that
municipality furnished by the municipality have reported
gross receipts to the department but have not reported gross
receipts for that municipality under the Gross Receipts and
Compensating Tax Act or a local option gross receipts tax
imposed by that municipality;

(2) the officials or employees of a county
of this state authorized in a written request by the county
for a period specified in the request within the twelve
months preceding the request; provided that the county
receiving the information has entered into a written
agreement with the department that the information shall be
used for tax purposes only and specifying that the county is
subject to the confidentiality provisions of Section 7-1-8
NMSA 1978 and the penalty provisions of Section 7-1-76
NMSA 1978:

(a) the names, taxpayer identification
numbers and addresses of registered gross receipts taxpayers
reporting gross receipts either for that county in the case
of a local option gross receipts tax imposed on a countywide
basis or only for the areas of that county outside of any
incorporated municipalities within that county in the case of
a county local option gross receipts tax imposed only in
areas of the county outside of any incorporated
municipalities. The department may also reveal the
information described in this subparagraph quarterly or upon
such other periodic basis as the secretary and the county may
agree in writing;

(b) a range of taxable gross receipts
of registered gross receipts paid by taxpayers from business
locations attributable either to that county in the case of a
local option gross receipts tax imposed on a countywide basis
or only to the areas of that county outside of any
incorporated municipalities within that county in the case of
a county local option gross receipts tax imposed only in
areas of the county outside of any incorporated
municipalities; provided that authorization from the federal
internal revenue service to reveal such information has been received. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the county may agree in writing;

(c) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis;

and

(d) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons
engaging in business in that county outside of the
incorporated municipalities; and

(3) officials or employees of a municipality
or county of this state, authorized in a written request of
the municipality or county, for purposes of inspection, the
records of the department pertaining to an increase or
decrease to a distribution or transfer made pursuant to
Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the
basis for the increase or decrease; provided that the
municipality or county receiving the information has entered
into a written agreement with the department that the
information shall be used for tax purposes only and
specifying that the municipality or county is subject to the
confidentiality provisions of Section 7-1-8 NMSA 1978 and the
penalty provisions of Section 7-1-76 NMSA 1978. The
authorized officials or employees may only reveal the
information provided in this paragraph to another authorized
official or employee, to an employee of the department, or a
district court, an appellate court or a federal court in a
proceeding relating to a disputed distribution and in which
both the state and the municipality or county are parties.

B. The department may require that a municipal or
county official or employee satisfactorily complete
appropriate training on protecting confidential information
prior to receiving the information pursuant to Subsection A
of this section."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2015.
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

Don L. Tripp, Speaker
House of Representatives

Denise Ramonas, Chief Clerk
House of Representatives

Approved by me this 8th day of April, 2015

Governor Susana Martinez
State of New Mexico