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SENATE BILL 90

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Linda M. López

AN ACT

RELATING TO TAXATION; ENACTING THE FIREARM AND AMMUNITION TAX ACT TO IMPOSE A TAX ON THE SALE OF FIREARMS AND AMMUNITION; DISTRIBUTING THE REVENUE FROM THE TAX TO THE CRIME VICTIMS REPARATION FUND AND A NEW FAMILY REPRESENTATION AND ADVOCACY FUND; CREATING THE FAMILY REPRESENTATION AND ADVOCACY FUND.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Firearm and Ammunition Tax Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Firearm and Ammunition Tax Act:

A. "ammunition" means ammunition or cartridge cases, primers, bullets or propellant powder designed for use in any firearm;

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1 B. "disclosed agency" means a person receiving
2 money from a third party on behalf of another if the person
3 receiving the money, or the person on whose behalf the money is
4 received, disclosed the relationship to the third party from
5 whom the person receives money, or if the third party otherwise
6 has actual knowledge that the person to whom the money is paid
7 receives the money on behalf of another;

8 C. "engaging in business" means carrying on or
9 causing to be carried on the selling of firearms, firearm
10 precursor parts or ammunition with the purpose of direct or
11 indirect benefit;

12 D. "firearm" means a weapon that will or is
13 designed to or may readily be converted to expel a projectile
14 by the action of an explosive and includes the frame or
15 receiver of any such weapon, a firearm muffler or firearm
16 silencer or a firearm precursor part;

17 E. "firearm precursor part" means any forging,
18 casting, printing, extrusion, machined body or similar article
19 that has reached a stage in manufacture where it may readily be
20 completed, assembled or converted to be used as the frame or
21 receiver of a functional firearm or that is marketed or sold to
22 the public to become or be used as the frame or receiver of a
23 functional firearm once completed, assembled or converted;

24 F. "gross receipts" means the total amount of money
25 or the value of other consideration received from selling

1 firearms or ammunition in New Mexico or from leasing or
2 licensing firearms or ammunition employed in New Mexico. In an
3 exchange in which the money or other consideration received
4 does not represent the value of the property or service
5 exchanged, "gross receipts" means the reasonable value of the
6 property or service exchanged. "Gross receipts":

7 (1) includes:

8 (a) any receipts from sales of firearms
9 or ammunition handled on consignment; and

10 (b) receipts collected by a marketplace
11 provider engaging in business in the state from sales, leases
12 and licenses of firearms or ammunition that are sourced to this
13 state and are facilitated by the marketplace provider on behalf
14 of marketplace sellers, regardless of whether the marketplace
15 sellers are engaging in business in the state; and

16 (2) excludes:

17 (a) cash discounts allowed and taken;

18 (b) New Mexico gross receipts tax
19 payable on transactions for the reporting period;

20 (c) taxes imposed pursuant to the
21 provisions of any local option gross receipts tax that is
22 payable on transactions for the reporting period;

23 (d) any gross receipts or sales taxes
24 imposed by an Indian nation, tribe or pueblo; provided that the
25 tax is approved, if approval is required by federal law or

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1 regulation, by the United States secretary of the interior; and
2 provided further that the gross receipts or sales tax imposed
3 by the Indian nation, tribe or pueblo provides a reciprocal
4 exclusion for gross receipts, sales or gross receipts-based
5 excise taxes imposed by the state or its political
6 subdivisions;

7 (e) any type of time-price differential;
8 and

9 (f) amounts received solely on behalf of
10 another in a disclosed agency capacity;

11 G. "marketplace provider" means a person who
12 facilitates the sale, lease or license of a firearm or
13 ammunition on a marketplace seller's behalf, or on the
14 marketplace provider's own behalf:

15 (1) by listing or advertising the sale, lease
16 or license, by any means, whether physical or electronic,
17 including by catalog, internet website or television or radio
18 broadcast; and

19 (2) either directly or indirectly, through
20 agreements or arrangements with third parties collecting
21 payment from the customer and transmitting that payment to the
22 seller, regardless of whether the marketplace provider receives
23 compensation or other consideration in exchange for the
24 marketplace provider's services;

25 H. "marketplace seller" means a person who sells,

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1 leases or licenses firearms or ammunition through a marketplace
2 provider;

3 I. "peace officer" means any full-time salaried or
4 certified part-time salaried officer who by virtue of office or
5 public employment is vested by law with the duty to maintain
6 the public peace; and

7 J. "person" means:

8 (1) an individual, estate, trust, receiver,
9 cooperative association, club, corporation, company, firm,
10 partnership, limited liability company, limited liability
11 partnership, joint venture, syndicate or other entity,
12 including any gas, water or electric utility owned or operated
13 by a county, municipality or other political subdivision of the
14 state; or

15 (2) a national, federal, state, Indian or
16 other governmental unit or subdivision, or an agency,
17 department or instrumentality of any of the foregoing.

18 SECTION 3. [NEW MATERIAL] FIREARM AND AMMUNITION TAX.--

19 A. An excise tax is imposed on a person engaging in
20 the business of selling, leasing or licensing firearms or
21 ammunition in New Mexico; provided that, in the case of a sale,
22 the sale is made for a purpose other than resale in the regular
23 course of business. The tax imposed by this section may be
24 referred to as the "firearm and ammunition tax".

25 B. The rate of the firearm and ammunition tax is

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1 eleven percent of the gross receipts from the sale of a firearm
2 or ammunition.

3 SECTION 4. [NEW MATERIAL] CERTAIN CONTRACT SALES.--When
4 the sale of a firearm or ammunition is made under any type of
5 charge, conditional or time-sales contract or the leasing of a
6 firearm or ammunition is made under a leasing contract, the
7 seller or lessor may elect to treat all receipts, excluding any
8 type of time-price differential, under such contracts as gross
9 receipts as and when the payments are actually received. If
10 the seller or lessor transfers the seller's or lessor's
11 interest in any such contract to a third person, the seller or
12 lessor shall pay the firearm and ammunition tax upon the full
13 sale or leasing contract amount, excluding any type of time-
14 price differential.

15 SECTION 5. [NEW MATERIAL] EXEMPTIONS.--

16 A. Exempted from the firearm and ammunition tax is
17 the sale of a firearm or ammunition to an active or retired
18 peace officer or law enforcement agency that employs a peace
19 officer.

20 B. Exempted from the firearm and ammunition tax is
21 the isolated or occasional sale of or leasing of a firearm or
22 ammunition by a person who is neither regularly engaged nor
23 holding the person's self out as engaged in the business of
24 selling or leasing firearms or ammunition.

25 SECTION 6. [NEW MATERIAL] DATE PAYMENT DUE.--The firearm

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1 and ammunition tax is to be paid on or before the twenty-fifth
2 day of the month following the month in which the taxable sale
3 occurs.

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

6 "7-1-2. APPLICABILITY.--The Tax Administration Act
7 applies to and governs:

8 A. the administration and enforcement of the
9 following taxes or tax acts as they now exist or may hereafter
10 be amended:

- 11 (1) Income Tax Act;
- 12 (2) Withholding Tax Act;
- 13 (3) Oil and Gas Proceeds and Pass-Through
14 Entity Withholding Tax Act;
- 15 (4) Gross Receipts and Compensating Tax Act,
16 Interstate Telecommunications Gross Receipts Tax Act and Leased
17 Vehicle Gross Receipts Tax Act;
- 18 (5) Liquor Excise Tax Act;
- 19 (6) Local Liquor Excise Tax Act;
- 20 (7) any municipal local option gross receipts
21 tax or municipal compensating tax;
- 22 (8) any county local option gross receipts tax
23 or county compensating tax;
- 24 (9) Special Fuels Supplier Tax Act;
- 25 (10) Gasoline Tax Act;

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1 (11) petroleum products loading fee, which fee
2 shall be considered a tax for the purpose of the Tax
3 Administration Act;

4 (12) Alternative Fuel Tax Act;

5 (13) Cigarette Tax Act;

6 (14) Estate Tax Act;

7 (15) Railroad Car Company Tax Act;

8 (16) Investment Credit Act, rural job tax
9 credit, Laboratory Partnership with Small Business Tax Credit
10 Act, Technology Jobs and Research and Development Tax Credit
11 Act, Film Production Tax Credit Act, Affordable Housing Tax
12 Credit Act and high-wage jobs tax credit;

13 (17) Corporate Income and Franchise Tax Act;

14 (18) Uniform Division of Income for Tax
15 Purposes Act;

16 (19) Multistate Tax Compact;

17 (20) Tobacco Products Tax Act;

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

22 (22) the Insurance Premium Tax Act;

23 (23) the Health Care Quality Surcharge Act;

24 [and]

25 (24) the Cannabis Tax Act; and

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- 1 (25) the Firearm and Ammunition Tax Act;
- 2 B. the administration and enforcement of the
- 3 following taxes, surtaxes, advanced payments or tax acts as
- 4 they now exist or may hereafter be amended:
- 5 (1) Resources Excise Tax Act;
- 6 (2) Severance Tax Act;
- 7 (3) any severance surtax;
- 8 (4) Oil and Gas Severance Tax Act;
- 9 (5) Oil and Gas Conservation Tax Act;
- 10 (6) Oil and Gas Emergency School Tax Act;
- 11 (7) Oil and Gas Ad Valorem Production Tax Act;
- 12 (8) Natural Gas Processors Tax Act;
- 13 (9) Oil and Gas Production Equipment Ad
- 14 Valorem Tax Act;
- 15 (10) Copper Production Ad Valorem Tax Act;
- 16 (11) any advance payment required to be made
- 17 by any act specified in this subsection, which advance payment
- 18 shall be considered a tax for the purposes of the Tax
- 19 Administration Act;
- 20 (12) Enhanced Oil Recovery Act;
- 21 (13) Natural Gas and Crude Oil Production
- 22 Incentive Act; and
- 23 (14) intergovernmental production tax credit
- 24 and intergovernmental production equipment tax credit;
- 25 C. the administration and enforcement of the

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1 following taxes, surcharges, fees or acts as they now exist or
2 may hereafter be amended:

3 (1) Weight Distance Tax Act;

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

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

8 (4) 911 emergency surcharge and the network
9 and database surcharge, which surcharges shall be considered
10 taxes for purposes of the Tax Administration Act;

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

14 (6) the water conservation fee imposed by
15 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
16 for the purposes of the Tax Administration Act; and

17 (7) the gaming tax imposed pursuant to the
18 Gaming Control Act; and

19 D. the administration and enforcement of all other
20 laws, with respect to which the department is charged with
21 responsibilities pursuant to the Tax Administration Act, but
22 only to the extent that the other laws do not conflict with the
23 Tax Administration Act."

24 **SECTION 8.** A new section of the Tax Administration Act is
25 enacted to read:

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1 "[NEW MATERIAL] DISTRIBUTIONS--FIREARM AND AMMUNITION

2 TAX.--

3 A. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 shall be made to the crime victims reparation fund in an
5 amount equal to fifty percent of the net receipts attributable
6 to the firearm and ammunition tax.

7 B. A distribution pursuant to Section 7-1-6.1 NMSA
8 1978 shall be made to the family representation and advocacy
9 fund in an amount equal to fifty percent of the net receipts
10 attributable to the firearm and ammunition tax."

11 SECTION 9. Section 7-9-3.5 NMSA 1978 (being Laws 2003,
12 Chapter 272, Section 3, as amended) is amended to read:

13 "7-9-3.5. DEFINITION--GROSS RECEIPTS.--

14 A. As used in the Gross Receipts and Compensating
15 Tax Act:

16 (1) "gross receipts" means the total amount of
17 money or the value of other consideration received from selling
18 property in New Mexico, from leasing or licensing property
19 employed in New Mexico, from granting a right to use a
20 franchise employed in New Mexico, from selling services
21 performed outside New Mexico, the product of which is initially
22 used in New Mexico, or from performing services in New Mexico.
23 In an exchange in which the money or other consideration
24 received does not represent the value of the property or
25 service exchanged, "gross receipts" means the reasonable value

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1 of the property or service exchanged;

2 (2) "gross receipts" includes:

3 (a) any receipts from sales of tangible
4 personal property handled on consignment;

5 (b) the total commissions or fees
6 derived from the business of buying, selling or promoting the
7 purchase, sale or lease, as an agent or broker on a commission
8 or fee basis, of any property, service, stock, bond or
9 security;

10 (c) amounts paid by members of any
11 cooperative association or similar organization for sales or
12 leases of personal property or performance of services by such
13 organization;

14 (d) amounts received from transmitting
15 messages or conversations by persons providing telephone or
16 telegraph services;

17 (e) amounts received by a New Mexico
18 florist from the sale of flowers, plants or other products that
19 are customarily sold by florists where the sale is made
20 pursuant to orders placed with the New Mexico florist that are
21 filled and delivered outside New Mexico by an out-of-state
22 florist;

23 (f) the receipts of a home service
24 provider from providing mobile telecommunications services to
25 customers whose place of primary use is in New Mexico if: 1)

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1 the mobile telecommunications services originate and terminate
2 in the same state, regardless of where the services originate,
3 terminate or pass through; and 2) the charges for mobile
4 telecommunications services are billed by or for a customer's
5 home service provider and are deemed provided by the home
6 service provider. For the purposes of this section, "home
7 service provider", "mobile telecommunications services",
8 "customer" and "place of primary use" have the meanings given
9 in the federal Mobile Telecommunications Sourcing Act; and

10 (g) receipts collected by a marketplace
11 provider engaging in business in the state from sales, leases
12 and licenses of tangible personal property, sales of licenses
13 and sales of services or licenses for use of real property that
14 are sourced to this state and are facilitated by the
15 marketplace provider on behalf of marketplace sellers,
16 regardless of whether the marketplace sellers are engaging in
17 business in the state; and

18 (3) "gross receipts" excludes:

19 (a) cash discounts allowed and taken;
20 (b) New Mexico gross receipts tax,
21 governmental gross receipts tax, leased vehicle gross receipts
22 tax, ~~[and]~~ cannabis excise tax and firearm and ammunition tax
23 payable on transactions for the reporting period;

24 (c) taxes imposed pursuant to the
25 provisions of any local option gross receipts tax that is

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1 payable on transactions for the reporting period;

2 (d) any gross receipts or sales taxes
3 imposed by an Indian nation, tribe or pueblo; provided that the
4 tax is approved, if approval is required by federal law or
5 regulation, by the secretary of the interior of the United
6 States; and provided further that the gross receipts or sales
7 tax imposed by the Indian nation, tribe or pueblo provides a
8 reciprocal exclusion for gross receipts, sales or gross
9 receipts-based excise taxes imposed by the state or its
10 political subdivisions;

11 (e) any type of time-price differential;

12 (f) amounts received solely on behalf of
13 another in a disclosed agency capacity; and

14 (g) amounts received by a New Mexico
15 florist from the sale of flowers, plants or other products that
16 are customarily sold by florists where the sale is made
17 pursuant to orders placed with an out-of-state florist for
18 filling and delivery in New Mexico by a New Mexico florist.

19 B. When the sale of property or service is made
20 under any type of charge, conditional or time-sales contract or
21 the leasing of property is made under a leasing contract, the
22 seller or lessor may elect to treat all receipts, excluding any
23 type of time-price differential, under such contracts as gross
24 receipts as and when the payments are actually received. If
25 the seller or lessor transfers the seller's or lessor's

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1 interest in any such contract to a third person, the seller or
2 lessor shall pay the gross receipts tax upon the full sale or
3 leasing contract amount, excluding any type of time-price
4 differential."

5 SECTION 10. Section 32A-27-1 NMSA 1978 (being Laws 2022,
6 Chapter 51, Section 1) is amended to read:

7 "32A-27-1. SHORT TITLE.--~~[This act]~~ Chapter 32A, Article
8 27 NMSA 1978 may be cited as the "Family Representation and
9 Advocacy Act".

10 SECTION 11. A new section of the Family Representation
11 and Advocacy Act is enacted to read:

12 "[NEW MATERIAL] FAMILY REPRESENTATION AND ADVOCACY FUND--
13 CREATED.--The "family representation and advocacy fund" is
14 created as a nonreverting fund in the state treasury. The fund
15 consists of distributions, appropriations, gifts, grants,
16 donations and income from investment of the fund. The office
17 shall administer the fund. Money in the fund is subject to
18 appropriation by the legislature to provide money for the
19 provision of services to children and families involved in
20 abuse and neglect and fostering connections cases pursuant to
21 the Family Representation and Advocacy Act. Expenditures from
22 the fund shall be by warrant of the secretary of finance and
23 administration pursuant to vouchers signed by the director."

24 SECTION 12. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is January 1, 2025.

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