

LUNA COUNTY
ORDINANCE NO. 84 - 8

AN ORDINANCE ENACTED PURSUANT TO SECTIONS 7-21-1 to
7-21-7 NMSA 1978 AUTHORIZING A COUNTY SALES TAX

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
LUNA COUNTY THAT:

Section 1. Title.

This ordinance may be cited as the "LUNA County
Sales Tax Ordinance."

Section 2. Declaration of intent and purpose.

Pursuant to the County Sales Tax Act (Sections 7-21-1 to 7-21-7 NMSA
1978) which authorized counties to enact a sales tax, it is hereby declared the
purpose and intent of the Board of Commissioners of LUNA
County to so enact an ordinance imposing a sales tax of one-fourth of one
percent (1/4 of 1%) in compliance with the County Sales Tax Act. It is the
further declared purpose and intent that this ordinance shall conform to the
definitions and applicable gross receipts tax provisions of the New Mexico Gross
Receipts and Compensating Tax, and any interpretation of this ordinance should
be in conformity with the applicable sections of the Gross Receipts and
Compensating Tax Act.

Section 3. Definitions.

As used in the LUNA County Sales Tax Ordinance



STATE OF NEW MEXICO - COUNTY OF LUNA RECEPTION NO. 84-04781
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD AT 9:48 A.M. ON
November 13, 1984 AND RECORDED IN BOOK 15, PAGE 786-814, OF Misc
Natalee Pacheco

(16) drilling wells of any type, including seismograph shot holes or core drilling; or

(17) similar work;

D. "financial corporation" means any savings and loan association, or any incorporated savings and loan company, trust company, mortgage banking company, consumer finance company or other financial corporation;

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

F. "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico, or from performing services in New Mexico, and includes any receipts from sales of tangible personal property handled on consignment but excludes cash discounts allowed and taken, New Mexico gross receipts tax payable on transactions for the reporting period and taxes imposed pursuant to the provisions of the County Sales Tax Act, the County Fire Protection Excise Tax Act, County Gross Receipts Tax Act, the Municipal Gross Receipts Tax Act or the Supplemental Municipal Gross Receipts Tax Act which are payable on transactions for the reporting period and any type of time-price differential.

In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding

utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) the United States or any agency or instrumentality thereof, the state of New Mexico, or any political subdivision thereof;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and mobile homes;

J. "leasing" means any arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property;

K. "service" means all activities engaged in for other persons for a consideration, which activities involve predominately the performance of a service as distinguished from selling property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling.

"Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property;

L. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state;

Section 7. Exemptions.

A. No County sales tax shall be imposed on the gross receipts arising from:

- (1) transmitting long distance or toll telecommunications; or
- (2) transporting for hire persons or property by railroad, motor vehicle, air transportation or any other means from one point within the County to another point outside the County.

B. Exempted from the County sales tax are those receipts exempted in paragraphs (1) through (21) of this Subsection of Section 7 of the County Sales Tax Ordinance.

(1) **Governmental agencies.** Exempted from the County sales tax are the receipts of the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof. Receipts from the sale of gas, water or electricity by a utility owned or operated by a county, municipality or other political subdivision of the state are not exempted from the County sales tax.

(2) **Certain nonprofit facilities.** Exempted from the County sales tax are the receipts of nonprofit entities from the operation of facilities designed and used for providing accommodations for retired elderly persons.

(3) **Wages.** Exempted from the County sales tax are the receipts of employees from wages, salaries, commissions, or from any other form of remuneration for personal services.

(4) **Agricultural products.** Exempted from the County sales tax are the receipts of growers, producers, trappers, or nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, hides or

Natural Gas Processors Tax Act. No provision of the County Sales Tax Ordinance shall apply to the storing or using crude oil, natural gas or liquid hydrocarbons, individually or any combination thereof, when stored or used by a "processor," as defined by the Natural Gas Processors Tax Act, or by a person engaged in the business of refining oil, natural gas or liquid hydrocarbons, who stores or uses the oil, natural gas or liquid hydrocarbons in the regular course of his refining business.

(16) **Persons subject to Resources Excise Tax Act.** When a privilege tax is imposed for the privilege of severing or processing natural resources by the Resources Excise Tax Act, the provisions of the Resources Excise Tax Act shall apply for the privilege of engaging in the business stated in that act and no provision of the County Sales Tax Ordinance shall apply to or create a tax liability for such privilege, except as is provided in Section 7-25-8 NMSA 1978.

(17) **Oil and gas consumed in the pipeline transportation of oil and gas products.** Exempted from the County sales tax are receipts from the sale of oil, natural gas, liquid hydrocarbon or any combination thereof consumed as fuel in the pipeline transportation of such products.

(18) **Fees from social organizations.**

(a) Exempted from the County sales tax are the receipts from dues and registration fees of nonprofit social, fraternal, political, trade, labor or professional organizations and business leagues.

(b) For the purposes of this section:

1. "dues" means amounts that a member of an organization pays at recurring intervals to retain membership in an organization where such amounts are used for the general maintenance and upkeep of the organization; and

in Sections 7-13-41 and 7-13-4.2 NMSA 1978 for the period July 1, 1980 through June 30, 1991.

(10) **Occasional sale of property or services.** Exempted from the County sales tax are the receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing the same or similar property or service.

(11) **Certain organizations.** Exempted from the County sales tax are the receipts of organizations that demonstrate to the division that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered. This section does not apply to receipts derived from an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

(12) **Resale activities of an armed forces instrumentality.** Exempted from the County sales tax are the receipts from selling tangible personal property and the use of property by an instrumentality of the armed forces of the United States engaged in resale activities.

(13) **Oil and gas or mineral interests.** Exempted from the County sales tax are the receipts from the sale of or leasing of oil, natural gas or mineral interests.

(14) **Persons subject to Oil and Gas Emergency School Tax Act.** When a privilege tax is imposed on the business of severing products in New Mexico by the Oil and Gas Emergency School Tax Act, the provisions of the Oil

tangible personal property either by itself or in combination with other tangible personal property in the ordinary course of business.

C. **Sales of a service for resale.** Receipts from selling a service for resale may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate. The buyer delivering the nontaxable transaction certificate must separately state the value of the service purchased in his charge for the service on its subsequent sale, and the subsequent sale must be in the ordinary course of business and subject to the County sales tax.

D. **Sale of tangible tangible personal property for leasing.** Receipts from selling tangible personal property, other than furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978, other than coin-operated machines and other than mobile homes may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must be engaged in a business which derives a substantial portion of its receipts from leasing or selling tangible personal property of the type leased. The buyer may not utilize the tangible personal property in any manner other than holding it for lease or sale, or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business.

E. **Lease for subsequent lease.** Receipts from leasing tangible personal property, other than furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978, other than coin-operated machines and other than mobile homes may be

claimed by the seller or lessor which require delivery of these nontaxable transaction certificates shall be disallowed. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the division. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates. When the seller or lessor accepts a nontaxable transaction certificate within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.

B. Properly executed documents required to support the deductions provided in Section 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 should be in the possession of the seller at the time the nontaxable transactions occur. If the seller is not in possession of these documents within sixty days from the date notice requiring the possession of these documents is given to the seller by the director or his delegate, deductions claimed by the seller or lessor which require delivery of these documents shall be disallowed. These documents shall contain the information, and be in a form, prescribed by the bureau. When the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts.

(2) The buyer delivering the nontaxable transaction certificate must have the construction services performed upon:

(a) a construction project which is subject to the County sales tax upon its completion or upon the completion of the overall construction project of which it is a part; or

(b) a construction which is subject to the County sales tax upon the sales in the ordinary course of business of the real property upon which it was constructed.

H. Sale or lease of real property and lease of mobile homes.

(1) Receipts from the sale or lease of real property, and from the lease of a mobile home and as provided in Subsection (2) of this section, other than receipts from the sale or lease of oil, natural gas or mineral interests exempted by Section 7-9-32 NMSA 1978 may be deducted from gross receipts. However, that portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of his construction business may not be deducted from gross receipts.

(2) Receipts from the rental of a mobile home for a period of at least one month may be deducted from gross receipts. Receipts received by hotels, motels, rooming houses, campgrounds, guest ranches, trailer parks, or similar facilities, except receipts received by trailer parts from the rental of a space for a mobile home for a period of at least one month, from lodgers, guests, roomers or occupants are not receipts from leasing real property for purposes of this section.

K. Intrastate transportation and services in interstate commerce.

(1) Receipts from transporting persons or property from one point to another in this state may be deducted from gross receipts when such persons or property, including any special or extra service reasonably necessary in connection therewith, are being transported in interstate or foreign commerce under a single contract.

(2) Receipts from handling, storage, drayage or packing of property or any other accessorial services on property, which property has moved or will move in interstate or foreign commerce, when such services are performed by a local agent for a carrier or a carrier, and when such services are performed under a single contract in relation to transportation services, may be deducted from gross receipts.

L. Sale of certain services to an out-of-state buyer.

(1) Receipts from performing a service other than a legal, accounting or architectural service may be deducted from gross receipts if the sale of the service is made to a buyer who delivers to the seller either a nontaxable transaction certificate or other evidence acceptable to the director that the transaction does not contravene the conditions set out in Subsection (3) of this section.

(2) The buyer delivering the nontaxable transaction certificate or other evidence acceptable to the director must not contravene the conditions set out in Subsection (3) of this section.

(3) Receipts from performance of a service shall not be subject to the deduction provided in this section if the buyer of the service, any of his employees or any person in privity with him:

W. **Warranty obligations.** Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts.

X. **Administrative and accounting services.** Receipts of a corporation for administrative and accounting services performed by it for a wholly owned subsidiary corporation upon a nonprofit or cost basis, and receipts from a wholly owned subsidiary for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis, may be deducted from gross receipts.

Y. **Rental or lease of vehicles used in interstate commerce.** Receipts from the rental or leasing of vehicles used in the transportation of passengers or property for hire in interstate commerce under the regulations or authorization of any agency of the United States may be deducted from gross receipts.

Z. **Trade-in allowance.** That portion of the receipts of a seller that is represented by a trade-in of tangible personal property of the same type being sold, except for the receipts represented by a trade-in of a mobile home, may be deducted from gross receipts.

AA. **Special fuel.**

(1) Receipts from the sale of special fuel, as defined in Section 7-16-2 NMSA 1978, may be deducted from gross receipts if the purchaser is a bonded special fuel user under Section 7-16-10 NMSA 1978 who delivers a nontaxable transaction certificate to the seller. If the purchaser delivering the nontaxable transaction certificate is not subsequently required to pay the excise tax imposed by Section 7-16-3 NMSA 1978 on a quantity of the special fuel purchased, the compensating tax is due on the value of the fuel upon which the excise tax was not paid when the special fuel is used.

(1) Receipts from warehousing grain or other agricultural products may be deducted from gross receipts.

(2) Receipts from threshing, cleaning, growing, cultivating or harvesting agricultural products, including the ginning of cotton or processing for growers, producers or nonprofit marketing associations of other agricultural products raised for food and fiber, including livestock, may be deducted from gross receipts.

O. **Sales to certain organizations.** Receipts from selling tangible personal property, other than metalliferous mineral ore, to organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, may be deducted from gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must employ the tangible personal property in the conduct of the functions described in Section 501(c)(3) and must not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered. Receipts from selling tangible personal property that will become an ingredient or component part of a construction project are not receipts from selling tangible personal property for purposes of this section.

P. **Certain receipts.** Receipts from charges made in connection with the organization, making or assumption of a loan or from charges made for handling loan payments may be deducted from gross receipts.

shall be satisfied by additional assessments of the citizens of the County or by any other legal means. Should the division require it, the County shall enter into a contract with the division the terms of which shall be the same as those set forth in this section.

Section 12. Cost of administration; deposit and use of revenues. All taxes and revenues collected pursuant to the County sales tax, with the exception of those amounts which are withheld from the County pursuant to Section 7-21-6 NMSA 1978 for administrative costs, shall be deposited by the County to the credit of the County Indigent Hospital Claims Fund of the County. This fund is to be used solely for the support of indigent hospital patients who are residents of the County.

Section 13. Effective date.

The effective date of the County Sales Tax Ordinance shall be July 1, 1984.

Section 14. Expiration date. The County Sales Tax Ordinance shall expire five years from the effective date of the ordinance.

Section 15. Vote of electorate; adoption

A. The County Sales Tax Ordinance shall be submitted to a vote of the electorate of the County.

B. The ordinance shall be deemed to have been adopted on the date when the results of the election at which the ordinance is submitted to a vote of the electorate are certified to be in favor of its adoption.

Section 16. Severability.

If any part or parts or application of any part of the County Sales Tax Ordinance is held invalid, such holding shall not affect the validity of the

certificate must have the service performed directly upon tangible personal property which he is in the business of manufacturing or upon ingredients or component parts thereof.

EE. **Travel agents' commissions paid by certain entities.** Receipts of travel agents derived from commissions paid by maritime transportation companies and interstate airlines, railroads and passenger buses for booking, referral, reservation or ticket services may be deducted from gross receipts.

FF. **Certain mobile homes.** Receipts from the resale of a mobile home may be deducted from gross receipts if the sale is made of a mobile home that was subject to the gross receipts, compensating or motor vehicle excise tax upon its initial sale or use in New Mexico. The seller must retain and furnish proof satisfactory to the director that a gross receipts, compensating or motor vehicle excise tax was paid upon the initial sale or use in New Mexico of a mobile home, and in the absence of such proof, it is presumed that the tax was not paid. Proof that a New Mexico certificate of title was issued for a mobile home in 1972 or a prior year or proof that a mobile home for which a New Mexico certificate of title has been issued was manufactured in 1967 or a prior year is proof that a motor vehicle excise tax was paid on the initial sale or use in New Mexico of that mobile home.

GG. **Films and tapes.** Receipts from the leasing or licensing of theatrical and television films and tapes to a person engaged in the business of providing public or commercial entertainment from which gross receipts are derived may be deducted from gross receipts.

ATTEST:

Tessa C. Hand
County Clerk

APPROVED AS TO THE FORM AND EFFECTIVE DATE THIS
DAY OF _____, 19____.

NOTE: USED TAXATION & REVENUE'S MODEL ORDINANCE-RECEIPT OF SAME ACKNOWLEDGED BY TAX & REV
THEIR LETTER OF OCTOBER 26, 1984

Revenue Division Director

Claims
We hereby certify that the 1/4 of 1% Indigent Hospital County Sales Tax
Ordinance/ ^{No. 84-8} was duly enacted by a vote of the electorate on November 6,
19 84, and the results were certified to us on November 9,
19 84.

BOARD OF COUNTY COMMISSIONERS
OF LUNA COUNTY

Walter W. Schultz
Chairman
Walter W. Schultz

Dona Irwin
~~VICE CHAIRMAN~~
Member
Dona Irwin

Douglas Tharr
Member
Douglas Tharr

ATTEST:

Tessa C. Hand
County Clerk

