

3-38-13. Short title.

Sections 3-38-13 through 3-38-24 NMSA 1978 may be cited as the "Lodgers' Tax Act".

History: 1953 Comp., § 14-37-14, enacted by Laws 1969, ch. 199, § 1; 1996, ch. 58, § 1.

3-38-14. Definitions.

As used in the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978]:

- A. "gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes;
- B. "lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has the right to use or possess the rooms or other units of accommodations in or at a taxable premises;
- C. "lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings;
- D. "occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Act;
- E. "person" means a corporation, firm, other body corporate, partnership, association or individual. "Person" includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" does not include the United States of America, the state of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government or any political subdivision of the state;
- F. "rent" means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodgers' Tax Act;
- G. "taxable premises" means a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for lodging;
- H. "tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax ;
- I. "tourist-related events" means events that are planned for, promoted to and attended by tourists;
- J. "tourist-related facilities and attractions" means facilities and attractions that are intended to be used by or visited by tourists;
- K. "tourist-related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events;
- L. "vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and
- M. "vendor" means a person or his agent furnishing lodgings in the exercise of the taxable service of lodging.

History: 1953 Comp., § 14-37-15, enacted by Laws 1969, ch. 199, § 2; 1996, ch. 58, § 2; 2000, ch. 37, § 1.

3-38-17.3. Enforcement.

A. An action to enforce the **Lodgers' Tax Act** [3-38-13 through 3-38-24 NMSA 1978] may be brought by:

- (1) the attorney general or the district attorney in the county of jurisdiction; or
- (2) a vendor who is collecting the proceeds of an occupancy tax in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the **Lodgers' Tax Act**.

C. The court shall award costs and reasonable attorneys' fees to the prevailing party in a court action to enforce the provisions of the **Lodgers' Tax Act**.

History: Laws 1996, ch. 58, § 6.

3-38-20. Ordinance requirements.

The ordinance imposing an occupancy tax or any ordinance amendatory thereof or supplemental thereto, except as limited by or otherwise provided in the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978], shall:

- A. provide a procedure for licensing each vendor and for refusing a vendor a license after an opportunity has been given to the vendor of a public hearing thereon by the governing body of the municipality or county, as the case may be;
- B. state the rate or other amount of the occupancy tax ; the times, place and method for the payment of the occupancy tax proceeds to the municipality or county; the accounts and other records to be maintained in connection with the occupancy tax ; a procedure for making refunds and resolving disputes relating to the occupancy tax , including exemptions pertaining thereto; the procedure for preservation and destruction of records and their inspection and investigation; vendor audit requirements; applicable civil and criminal penalties; and a procedure of liens, distraint and sales to satisfy such liens; and
- C. provide other rights, privileges, powers, immunities and other details relating to any such vendor licenses, the collection of the occupancy tax and the remittance of the proceeds thereof to the municipality or county.

History: 1953 Comp., § 14-37-21, enacted by Laws 1969, ch. 199, § 8; 1976 (S.S.), ch. 34, § 5; 1992, ch. 12, § 5.

3-38-21. Eligible uses of tax proceeds.

A. Subject to the limitations contained in Section 3-38-15 NMSA 1978, a municipality or county imposing an occupancy tax may use the proceeds from the occupancy tax to defray costs of:

(1) collecting and otherwise administering the occupancy tax, including the performance of audits required by the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978] pursuant to guidelines issued by the department of finance and administration;

(2) establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities and attractions or tourist-related transportation systems of the municipality, the county in which the municipality is located or the county;

(3) the principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Section 3-38-23 or 3-38-24 NMSA 1978;

(4) advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or county and tourist-related facilities, attractions and events within the area;

(5) providing police and fire protection and sanitation service for tourist-related facilities, attractions and events located in the respective municipality or county;

(6) providing a required minimum revenue guarantee for air service to the municipality or county to increase the ability of tourists to easily access the municipality's or county's tourist-related facilities, attractions and events; or

(7) any combination of the foregoing purposes or transactions stated in this section, but for no other municipal or county purpose.

B. As used in this section, "minimum revenue guarantee" is the amount of money guaranteed by a municipality or county to be earned by an airline providing air services to and from that municipality or county, which is the difference between the minimum flight charge revenue specified in the contract between the municipality or county and the airline and the amount of actual flight charge revenue received by the airline that is less than that contractual amount.

History: 1953 Comp., § 14-37-22, enacted by Laws 1969, ch. 199, § 9; 1976 (S.S.), ch. 34, § 6; 1983, ch. 217, § 1; 1987, ch. 9, § 2; 1989, ch. 203, § 1; 1995, ch. 97, § 1; 1996, ch. 58, § 7; 2016, ch. 30, § 1.

3-38-21.1. Contracting for services.

A. The governing body of a municipality or county may contract for the management of programs and activities funded with revenue from the tax authorized in Section 3-38-15 NMSA 1978. The governing body shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Within ten days of receiving the reports, the governing body shall furnish copies of them to the advisory board. Funds provided to the contracting person or governmental agency shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.

B. A person or governmental agency with whom a municipality contracts under this section to conduct an activity authorized by Section 3-38-21 NMSA 1978 shall maintain complete and accurate financial records of each expenditure of the tax revenue made and upon request of the governing body of the municipality or county shall make such records available for inspection.

C. The occupancy tax revenue spent for a purpose authorized by the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978] may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.

D. A person or governmental agency with whom a local governmental body contracts under this section may subcontract with the approval of the governing body of the municipality or county. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

History: Laws 1996, ch. 58, § 8.

3-38-22. Advisory boards created; duties.

A. The mayor of every municipality that imposes an occupancy tax pursuant to the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978] shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the municipality, two members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists and one member who is a resident of the municipality and represents the general public.

B. The chairman of every county commission that imposes an occupancy tax pursuant to the Lodgers' Tax Act shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the unincorporated area of the county, two members who are owners or operators of industries located within the unincorporated area of the county that primarily provide services or products to tourists and one member who is a resident of the unincorporated area of the county who represents the general public.

C. Members of the boards created under Subsections A and B of this section shall serve at the pleasure of the respective appointing authorities. The boards shall advise the respective governing bodies on the expenditure of funds authorized by Section 3-38-15 NMSA 1978 for advertising, publicizing and promoting tourist attractions and facilities in the respective counties and municipalities.

D. The advisory board shall submit to the mayor and council or county commission recommendations for the expenditures of funds authorized pursuant to the Lodgers' Tax Act for advertising, publicizing and promoting tourist-related attractions, facilities and events in the respective counties and municipalities.

History: 1953 Comp., § 14-37-22.1, enacted by Laws 1977, ch. 294, § 2; 1996, ch. 58, § 9.

3-38-23. Revenue bonds.

A. Revenue bonds may be issued at any time or from time to time by a municipality or county to defray wholly or in part the costs of any one, all or any combination of purposes authorized in Paragraphs (2) through (5) of Subsection A of Section 3-38-21 NMSA 1978.

B. The revenue bonds may be payable from and such payment may be secured by a pledge of and lien on the revenues derived from:

(1) the proceeds of the occupancy tax of the municipality or county after the deduction of those amounts required to be expended pursuant to Subsection D of Section 3-38-15 NMSA 1978 and the administration costs pertaining to the occupancy tax in an amount not to exceed ten percent of the occupancy tax receipts collected by the municipality or county in any fiscal year, excluding from the computation of such costs the administration costs ultimately recovered from delinquent vendors by civil action as penalties, costs of collection and attorney fees but not as interest on unpaid principal;

(2) the tourist-related facilities and attractions or tourist-related transportation systems to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the tourist-related facilities and attractions or tourist-related transportation systems; or

(3) a combination of such net revenues from both sources designated in Paragraphs (1) and (2) of this subsection.

C. The bonds shall bear interest at a rate as authorized in the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in the Public Securities Act.

D. Except as otherwise provided in the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978], revenue bonds authorized in the Lodgers' Tax Act shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

History: 1953 Comp., § 14-37-23, enacted by Laws 1969, ch. 199, § 10; 1976 (S.S.), ch. 34, § 7; 1987, ch. 9, § 3; 1996, ch. 58, § 10; 2016, ch. 30, § 2.

3-38-24. Refunding bonds.

A. Any municipality or county having issued revenue bonds as authorized in the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978] may issue refunding revenue bonds payable from pledged revenues therein authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the municipality or county may determine, notwithstanding the revenue sources or the pledge of such revenues or both are thereby modified.

B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds, or to any facilities relating thereto; or

(4) for any combination of the foregoing purposes.

C. The interest on any bond refunded shall not be increased to any rate in excess of the rate authorized in the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978] and shall be paid as authorized in that act.

D. Bonds for refunding any bonds for any other purpose permitted by the Lodgers' Tax Act may be issued separately or issued in combination in one series or more.

E. Except as otherwise provided in the Lodgers' Tax Act, refunding bonds authorized in the Lodgers' Tax Act shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

History: 1953 Comp., § 14-37-24, enacted by Laws 1969, ch. 199, § 11; 1976 (S.S.), ch. 34, § 8; 1987, ch. 9, § 4.

6-6-4.1. Local government division; additional duties; occupancy tax quarterly reports.

The local government division of the department of finance and administration shall promulgate rules and regulations that require the governing body of any municipality or county imposing and collecting an occupancy tax pursuant to the Lodgers' Tax Act [3-38-13 NMSA 1978] to report to the division on a quarterly basis any expenditure of occupancy tax funds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978.

History: Laws 1996, ch. 58, § 11.

7-9-53. Deduction; gross receipts tax ; sale or lease of real property and lease of manufactured homes.

A. Receipts from the sale or lease of real property and from the lease of a manufactured home as provided in Subsection B 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.

B. Receipts from the rental of a manufactured 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 parks from the rental of a space for a manufactured home or recreational vehicle for a period of at least one month, from lodgers , guests, roomers or occupants are not receipts from leasing real property for the purposes of this section.

C. Receipts attributable to the inclusion of furniture or appliances furnished as part of a leased or rented dwelling house, manufactured home or apartment by the landlord or lessor may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.8, enacted by Laws 1969, ch. 144, § 43; 1972, ch. 80, § 3; 1973, ch. 205, § 1; 1975, ch. 160, § 3; 1979, ch. 338, § 5; 1983, ch. 220, § 11; 1991, ch. 203, § 5; 1998, ch. 94, § 1.