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# 2019 SHORT TERM RENTAL MARKET ECONOMIC IMPACT ANALYSIS

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# 2019 SHORT TERM RENTAL MARKET ECONOMIC IMPACT ANALYSIS

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## 2019 SHORT TERM RENTAL MARKET ECONOMIC IMPACT ANALYSIS

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### Executive Summary

Southwest Planning and Marketing (SWPM) was contracted by the New Mexico Hotel Association (NMHA) to update an audit and fiscal impact analysis of short-term rentals in the State of New Mexico that was previously conducted in 2017 (research compiled in December 2016). The purpose of the update was to identify the number of active short-term rentals in the state, compare the market to the 2017 short-term rental market, and identify the additional estimated revenue that will be generated when the loophole exempting rental units with three or more rooms is no longer in effect as of January 1, 2020.

The scope of the audit included every community and county in New Mexico. The purpose of the audit was to identify the number of active short-term rental properties and the potential gross receipts and lodgers' taxes that could be generated from these properties.

SWPM spent over 200 hours conducting web searches, removing duplicates, and analyzing databases to determine available short-term rentals in New Mexico and their related fiscal impact (gross receipts and lodgers' taxes).

In 2017, SWPM identified a total 4,076 of short-term rental properties, of which 3,587 were taxable (after application of 3-room loophole). As of December 2019, the number of short-term rentals is estimated to be 5,659, all of which will be taxable beginning on January 1, 2020. If the loophole had not been closed, the total estimated number of taxable properties would have been 4,981.

Using an average annual conservative occupancy scenario for short-term rentals of 40% to determine the estimated fiscal impact of short-term rentals as of January 1, 2020 resulted in an estimated \$7.1 million generated annually in lodgers' tax to communities and counties and \$11.5 million generated annually in gross receipts tax (GRT) (total estimated taxes of \$18.6 million). If the 3-room loophole was still in effect, just \$6.0 million would be generated in lodgers' tax and \$9.8 million in GRT (total estimated taxes of \$15.9 million) from these short-term rentals.

## Methodology

Southwest Planning & Marketing (SWPM) conducted an audit of every community and county to identify the number of active short-term rentals in New Mexico as of December 2019. The purpose of the audit was to identify the number of active short-term rental properties and estimate the potential gross receipts and lodgers' taxes that could be generated from these properties. SWPM took the following steps to prepare this analysis:

1. Conduct Web Site Searches to Identify Short-Term Rental Properties Statewide – SWPM staff conducted a thorough web search. The information gathered included owner name, room rates, number of bedrooms and bathrooms, county, and town/city/village.
2. Eliminate Duplicate Property Listings – This was done by sorting the list by owner name and listing name.
3. Identify Tax Rates – SWPM collected publicly available tax data for each individual city/town/village to identify the applicable gross receipts and lodgers' tax rate for each property.
4. Identify Average Rental Price – SWPM determined the average advertised rental price per community/county.
5. Determine Potential Gross Revenue – SWPM utilized the average room rates to determine potential gross revenue throughout the state.
6. Determine Potential Gross Receipts and Lodgers' Taxes – SWPM compared the identified tax rates to the average rate and total number available room nights to determine the total gross receipts and lodgers' tax impact.
7. Determine Previously Exempted Properties – SWPM compared the percentage of 2017 properties that were exempted under the short-term rental lodgers' tax loophole to the number of properties in 2019 to estimate the number of properties that would be exempted beginning January 1, 2020 if the loophole was still in affect at that time.
8. Provide Various Occupancy Rate Scenarios – Revenue and taxes collected are a function of occupancy of the short-term rentals. SWPM provided percentage of occupancy scenarios from 10% occupancy to 60% occupancy.

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### Findings

Through web searches, SWPM identified 5,659 total active short-term rentals and an estimated total of 12,008 active available short-term rental room nights for rent in New Mexico as of December 2019. Average room rates, average number of bedrooms per property, individual property gross receipts tax (GRT), and individual property lodgers' tax rates were used to determine the potential revenue generated in New Mexico from short-term rentals. Assuming all rooms are occupied 100% of the time, total potential estimated tax revenue generated from these short-term rentals effective January 1, 2020 is \$46.5 million based on a total estimated gross revenue of \$354.0 million.

All Properties – 100% Occupancy	
Number of Properties	5,659
Average Number of Bedrooms	2.1
Number of Bedrooms	12,008
Available Room Nights (365 days)	4,383,054
Average Statewide Rate per Room	\$81
Total Revenue	\$353,965,007
Lodger's Tax (Avg. 5.0%)	\$17,658,127
GRT (Avg. 8.2%)	\$28,856,374
Total Taxes Generated	\$46,514,501

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By comparing the percentage of properties that were listed by owners with properties comprising three or more rooms in 2017, SWPM estimated the number of properties that would have been exempted from lodgers' taxes beginning January 1, 2020 under the 3-room loophole. Using this methodology, SWPM estimated that just 4,980 properties would be subject to lodgers' taxes in 2020 if the loophole was still in effect.

Estimated 2020 Properties Not Exempted Under 2017 Loophole & Related Revenues and Taxes 100% Occupancy	
Number of Properties	4,980
Average Number of Bedrooms	2.1
Number of Bedrooms	10,568
Available Room Nights (365 days)	3,857,217
Average Statewide Rate per Room	\$78
Total Revenue	\$301,610,750
Lodgers' Tax (Avg. 5.0%)	\$15,046,349
GRT ( Avg. 8.2%)	\$24,588,285
Total Taxes Generated	\$39,634,634

SWPM estimated that there would have been 679 properties exempted in 2020 if the lodgers' tax loophole had not been close. Closing the loophole has the potential to generate an estimated additional \$6.9 million (at 100% occupancy).

Estimated Impact of Closing Loophole	
Total Properties	5,659
Estimated Non-Exempted Properties	4,980
Estimated Exempted Properties	679
Estimated Non-Exempted Tax Revenue	\$46,514,501
Estimated Exempted Tax Revenue	\$6,879,867

## 2019 SHORT TERM RENTAL MARKET ECONOMIC IMPACT ANALYSIS

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### Potential Revenue Based on Occupancy Scenarios

Occupancy varies by season and geographic location in the state. Using an average annual conservative occupancy scenario for short-term rentals of 40%, \$7.1 million would be generated annually in lodgers' tax to communities and counties and \$11.5 million would be generated annually in GRT. This equates to annual total estimated taxes of \$18.6 million.

All Properties					
Room Nights (Total Available 4,383,054)	Room Nights	Annual Revenue Generated	Annual Revenue Generated from Lodgers' Tax	Annual Revenue Generated from Gross Receipts Tax	Total Annual Revenue Generated
100% Occupancy	4,383,054	\$353,965,007	\$17,658,127	\$28,856,374	\$46,514,501
Average Occupancy (10%)	438,305	\$35,396,501	\$1,765,813	\$2,885,637	\$4,651,450
Average Occupancy (20%)	876,611	\$70,793,001	\$3,531,625	\$5,771,275	\$9,302,900
Average Occupancy (30%)	1,314,916	\$106,189,502	\$5,297,438	\$8,656,912	\$13,954,350
Average Occupancy (40%)	1,753,222	\$141,586,003	\$7,063,251	\$11,542,549	\$18,605,800
Average Occupancy (50%)	2,191,527	\$176,982,504	\$8,829,063	\$14,428,187	\$23,257,250
Average Occupancy (60%)	2,629,833	\$212,379,004	\$10,594,876	\$17,313,824	\$27,908,700

The following chart provides revenue and taxes generated based on six occupancy levels for properties that would not be exempt under the 2017 loophole. Using a 40% occupancy rate, \$6.0 million would be generated annually in lodgers' tax to communities and counties and \$9.8 million would be generated annually in GRT. This equates to annual total taxes of \$15.9 million.

Estimated Fiscal Impact from 2020 Properties That Would Not Be Exempt Under 2017 Loophole					
Room Nights (Total Available 3,857,217)	Room Nights	Annual Revenue Generated	Annual Revenue Generated from Lodgers' Tax	Annual Revenue Generated from Gross Receipts Tax	Total Annual Revenue Generated
100% Occupancy	3,857,217	\$301,610,750	\$15,046,349	\$24,588,285	\$39,634,634
Average Occupancy (10%)	385,722	\$30,161,075	\$1,504,635	\$2,458,829	\$3,963,463
Average Occupancy (20%)	771,443	\$60,322,150	\$3,009,270	\$4,917,657	\$7,926,927
Average Occupancy (30%)	1,157,165	\$90,483,225	\$4,513,905	\$7,376,486	\$11,890,390
Average Occupancy (40%)	1,542,887	\$120,644,300	\$6,018,539	\$9,835,314	\$15,853,853
Average Occupancy (50%)	1,928,608	\$150,805,375	\$7,523,174	\$12,294,143	\$19,817,317
Average Occupancy (60%)	2,314,330	\$180,966,450	\$9,027,809	\$14,752,971	\$23,780,780

## Appendix A: Short-Term Rental Statistics by County

Short-Term Rentals Statistics by County							
County	Properties	BR	Average Bedrooms	Average Rate	Average Room Rate	Lodgers' Tax Rate	Gross Receipts Tax Rate
Bernalillo	1172	2207	1.9	\$111	\$59	5.0%	7.9%
Catron	21	35	1.7	\$107	\$64	5.0%	5.7%
Chavez	29	61	2.1	\$110	\$52	5.0%	7.8%
Cibola	3	4	1.3	\$75	\$56	5.0%	6.8%
Colfax	440	1136	2.6	\$253	\$98	5.0%	7.8%
Curry	23	41	1.8	\$86	\$48	5.0%	8.2%
Dona Ana	208	374	1.8	\$94	\$52	5.0%	8.3%
Eddy	82	156	1.9	\$105	\$55	5.0%	7.7%
Grant	49	75	1.5	\$77	\$50	5.0%	8.0%
Guadalupe	6	9	1.5	\$69	\$46	5.0%	8.0%
Hidalgo	14	32	2.3	\$120	\$53	5.0%	6.7%
Lea	15	33	2.2	\$152	\$69	5.0%	6.8%
Lincoln	982	2536	2.6	\$215	\$83	5.0%	8.4%
Los Alamos	24	26	1.1	\$69	\$64	5.0%	7.3%
Luna	11	16	1.5	\$66	\$45	5.0%	8.3%
McKinley	32	53	1.7	\$82	\$49	5.0%	8.0%
Mora	13	21	1.6	\$73	\$45	DNK	DNK
Otero	155	344	2.2	\$116	\$52	5.0%	8.0%
Quay	6	13	2.2	\$120	\$55	3.7%	8.4%
Rio Arriba	118	215	1.8	\$128	\$70	4.9%	7.5%
Roosevelt	2	1	0.5	\$63	\$125	5.0%	8.2%
San Juan	61	120	2.0	\$92	\$47	4.9%	7.9%
San Miguel	40	75	1.9	\$136	\$73	4.7%	7.8%
Sandoval	130	230	1.8	\$113	\$64	5.0%	7.6%
Santa Fe	1064	2054	1.9	\$204	\$106	5.0%	8.4%
Sierra	47	90	1.9	\$100	\$52	5.0%	8.5%
Socorro	23	39	1.7	\$92	\$54	5.0%	7.4%
Taos	877	1898	2.2	\$209	\$97	5.0%	8.5%
Union	5	13	2.6	\$88	\$34	5.0%	8.1%
Valencia	6	8	1.3	\$73	\$55	4.0%	8.3%

## Appendix B: New Mexico Lodgers' Tax Regulation

### **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.

### **ANNOTATIONS**

**The 1996 amendment**, effective July 1, 1996, substituted "Sections 3-38-13 through 3-38-24 NMSA 1978" for "This act".

**Law reviews.** — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

### **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.

## **ANNOTATIONS**

**The 2000 amendment**, effective July 1, 2000, in Subsection K, inserted "and" preceding "attractions" and "tourist-related" preceding "events"; and inserted "or his agent" in Subsection M.

**The 1996 amendment**, effective July 1, 1996, divided Subsection E into three sentences and added "Person" to the beginning of the second and third sentences, and added Subsections H through K and redesignated former Subsections H and I as Subsections L and M.

**Law reviews.** — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

## **3-38-15. Authorization of tax; limitations on use of proceeds.**

A. A municipality may impose by ordinance an occupancy tax for revenues on lodging within the municipality, and the board of county commissioners of a county may impose by ordinance an occupancy tax for revenues on lodging within that part of the county outside of the incorporated limits of a municipality.

B. The occupancy tax shall not exceed five percent of the gross taxable rent.

C. Every vendor who is furnishing any lodgings within a municipality or county is exercising a taxable privilege.

D. The following portions of the proceeds from the occupancy tax shall be used only for advertising, publicizing and promoting tourist-related attractions, facilities and events:

(1) if the municipality or county imposes an occupancy tax of no more than two percent, not less than one-fourth of the proceeds shall be used for those purposes;

(2) if the occupancy tax imposed is more than two percent and the municipality is not located in a class A county or the county is not a class A county, not less than one-half of the proceeds from the first three percent of the tax and not less than one-fourth of the proceeds from the tax in excess of three percent shall be used for those purposes; and

(3) if the occupancy tax imposed is more than two percent and the municipality is located in a class A county or the county is a class A county, not less than one-half of the proceeds from the tax shall be used for those purposes.

E. The proceeds from the occupancy tax in excess of the amount required to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events may be used for any purpose authorized in Section 3-38-21 NMSA 1978.

F. The proceeds from the occupancy tax that are required to be used to advertise, publicize and promote tourist-related attractions, facilities and events shall be used within two years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.

G. Notwithstanding the provisions of Paragraph (2) of Subsection D of this section, any use by a municipality or county of occupancy tax proceeds on January 1, 1996 may continue to be so used after July 1, 1996 in accordance with the provisions of this section and Section 3-38-21 NMSA 1978 as they were in effect prior to July 1, 1996; provided, any change in the use of those tax proceeds after July 1, 1996 is subject to the limitations of that paragraph.

H. Notwithstanding the provisions of Paragraph (2) of Subsection D of this section, the payment of principal and interest on outstanding bonds issued prior to January 1, 1996 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978 shall be made in accordance with the retirement schedules of the bonds established at the time of issuance. The amount of expenditures required under Paragraph (2) of Subsection D of this section shall be reduced each year, if necessary, to make the required payments of principal and interest of all outstanding bonds issued prior to January 1, 1996.

**History:** 1953 Comp., § 14-37-16, enacted by Laws 1969, ch. 199, § 3; 1976 (S.S.), ch. 34, § 1; 1977, ch. 294, § 1; 1983, ch. 207, § 1; 1987, ch. 9, § 1; 1996, ch. 58, § 3.

## ANNOTATIONS

**Cross references.** — For requirements of occupancy tax quarterly reports, *see 6-6-NMSA 1978.*

**The 1996 amendment**, effective July 1, 1996, rewrote Subsections D and E, added Subsections F and G, predesignated former Subsection F as Subsection H, and in Subsection H, substituted "Paragraph (2) of Subsection D" for "of Subsection E" near the beginning of the first and second sentences and substituted "January 1, 1996" for "July 1, 1977" near the middle of the first sentence and at the end of the second sentence.

**The 1987 amendment**, effective June 19, 1987, substituted "five percent" for "three percent" and deleted the exception relating to certain municipalities in Subsection B, inserted "derived from the first three percent" after "proceeds" in the first sentence in Subsection E and added the last sentence in Subsection E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 1 to 8, 68 to 81, 86 to 91.

64 C.J.S. Municipal Corporations §§ 1978 to 1984.

### **3-38-16. Exemptions.**

The occupancy tax shall not apply:

A. if a vendee:

(1) has been a permanent resident of the taxable premises for a period of at least thirty consecutive days; or

(2) enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty consecutive days;

B. if the rent paid by a vendee is less than two dollars (\$2.00) a day;

C. to lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;

D. to lodging accommodations at religious, charitable, educational or philanthropic institutions, including accommodations at summer camps operated by such institutions;

E. to clinics, hospitals or other medical facilities;

F. to privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or

G. if the vendor does not offer at least three rooms within or attached to a taxable premises for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction.

**History:** 1953 Comp., § 14-37-17, enacted by Laws 1969, ch. 199, § 4; 2000, ch. 37, § 2.

## ANNOTATIONS

**The 2000 amendment**, effective July 1, 2000, rewrote Subsection G, which formerly read, "if the taxable premises does not have at least three rooms or three other units of accommodations for lodging".

**Law reviews.** — For survey, "The Uniform Owner-Resident Relations Act," see 6 N.M.L. Rev. 293 (1976).

### **3-38-16. Exemptions. (Effective January 1, 2020.)**

*The occupancy tax shall not apply:*

A. *if a vendee:*

(1) *has been a permanent resident of the taxable premises for a period of at least thirty consecutive days; or*

(2) *enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty consecutive days;*

B. *if the rent paid by a vendee is less than two dollars (\$2.00) a day;*

C. *to lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;*

D. *to lodging accommodations at religious, charitable, educational or philanthropic institutions, including accommodations at summer camps operated by such institutions;*

E. *to clinics, hospitals or other medical facilities; or*

F. *to privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill.*

**History:** 1953 Comp., § 14-37-17, enacted by Laws 1969, ch. 199, § 4; 2000, ch. 37, § 2; 2019, ch. 25, § 1.

## ANNOTATIONS

**The 2019 amendment**, effective January 1, 2020, removed an exemption for certain short-term occupancy rentals from the occupancy tax; and deleted Subsection G.

### **3-38-17. Collection of taxes.**

A. Every vendor providing lodgings in a municipality or county imposing an occupancy tax shall collect the proceeds thereof on behalf of the municipality or county and shall act as a trustee therefor.

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

**History:** 1953 Comp., § 14-37-18, enacted by Laws 1969, ch. 199, § 5; 1976 (S.S.), ch. 34, § 2.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 866 to 880.

64 C.J.S. Municipal Corporations §§ 2070 to 2121.

### **3-38-17.1. Audit of vendors.**

The governing body of any municipality or county collecting over two hundred fifty thousand dollars (\$250,000) in occupancy tax proceeds shall select for annual random audits one or more vendors to verify the amount of gross rent subject to the occupancy tax and to ensure that the full amount of occupancy tax on that rent is collected. The governing body of any municipality or county collecting less than two hundred fifty thousand dollars (\$250,000) in receipts, per annum, of occupancy tax proceeds shall conduct random audits to verify full payment of occupancy tax receipts. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration.

**History:** Laws 1992, ch. 12, § 2; 1996, ch. 58, § 4.

## ANNOTATIONS

**The 1996 amendment**, effective July 1, 1996, substituted "two hundred fifty thousand dollars (\$250,000)" for "fifty thousand dollars (\$50,000)" near the beginning of the first and second sentences.

### **3-38-17.2. Financial reporting.**

A. The governing body of any municipality or county imposing and collecting an occupancy tax shall furnish to the advisory board that portion of any proposed budget, report or audit filed or received by the governing body pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act [12-6-1 through 12-6-14 NMSA 1978] that relates to the expenditure of occupancy tax funds within ten days of the filing or receipt of such proposed budget, report or audit by the local governing body.

B. The governing body of any municipality or county imposing and collecting an occupancy tax shall report to the local government division of the department of finance and administration on a quarterly basis any expenditure of occupancy tax funds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978 and shall furnish a copy of this report to the advisory board when it is filed with the division.

**History:** Laws 1996, ch. 58, § 5.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 58, § 12 made the act effective July 1, 1996.

### **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.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 58, § 12 made the act effective July 1, 1996.

### **3-38-18. Collection of delinquencies.**

A. The governing body of the municipality or county shall, by ordinance, provide that a vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the municipality or county, due to his failure to collect the tax or

otherwise, and shall provide for a civil penalty for any such failure in an amount equal to the greater of ten percent of the amount that was not duly remitted to the municipality or county or one hundred dollars (\$100).

B. The municipality or county may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate of not exceeding one percent a month, the costs of collection and reasonable attorneys' fees incurred in connection therewith.

**History:** 1953 Comp., § 14-37-19, enacted by Laws 1969, ch. 199, § 6; 1976 (S.S.), ch. 34, § 3; 1992, ch. 12, § 3.

#### **ANNOTATIONS**

**The 1992 amendment**, effective July 1, 1992, in Subsection A, substituted all of the present language of the subsection beginning with "amount equal to" for "amount of not exceeding ten percent of the amount which was not duly remitted to the municipality or county but in an amount not less than ten dollars (\$10.00)" and made minor stylistic changes.

### **3-38-18.1. Lien for occupancy tax; payment; certificate of liens.**

A. The occupancy tax imposed by a municipality or county constitutes a lien in favor of that municipality or county upon the personal and real property of the vendor providing lodgings in that municipality or county. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

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

C. The clerk or treasurer of the municipality or county shall furnish to any person applying for such a certificate a certificate showing the amount of all liens in the records of the municipality or county against any vendor pursuant to Chapter 3, Article 38 NMSA 1978.

**History:** Laws 1992, ch. 12, § 1.

#### **ANNOTATIONS**

**Alternative priorities.** — The priority language of Subsection A of 3-38-18.1 NMSA 1978 applies where a municipality is enforcing its lodgers' tax lien as provided by 3-36-1

through 3-36-6 NMSA 1978. Subsection A does not apply when a municipality chooses to enforce its lien under Subsection B and receive first priority of payment from the proceeds of a foreclosure sale. When named as a defendant in a foreclosure action, a municipality can choose not to proceed by way of enforcement of its lien through foreclosure as provided in 3-36-1 through 3-36-6 NMSA 1978 with the priority of its lien being as specified in Subsection A of 3-38-18.1 NMSA 1978, but can rely instead on Subsection B for first priority of payment from the proceeds of a foreclosure sale. *Wells Fargo Bank, N.A. v. City of Gallup*, 2011-NMCA-106, 150 N.M. 706, 265 P.3d 1279.

Where a municipality was named as a defendant in a foreclose action of plaintiff's deed of trust; throughout the proceedings, the municipality maintained that its lodgers' tax lien was junior and inferior to deed of trust; and the municipality approved the foreclosure judgment, which declared the municipality's lien junior and inferior to the deed of trust, the municipality was entitled, pursuant to Subsection B of 3-38-18.1 NMSA 1978, to payment from the sales proceeds before plaintiff received any proceeds. *Wells Fargo Bank, N.A. v. City of Gallup*, 2011-NMCA-106, 150 N.M. 706, 265 P.3d 1279.

### **3-38-19. Penalties.**

The governing body of the municipality or county shall, by ordinance, provide for penalties by creating a misdemeanor and imposing a fine of not more than five hundred dollars (\$500) or imprisonment for not more than ninety days or both for a violation by any person of the provisions of the occupancy tax ordinance for a failure to pay the tax, to remit the proceeds thereof to the municipality or county or to account properly for any lodging and the tax proceeds pertaining thereto.

**History:** 1953 Comp., § 14-37-20, enacted by Laws 1969, ch. 199, § 7; 1976 (S.S.), ch. 34, § 4; 1992, ch. 12, § 4.

#### **ANNOTATIONS**

**The 1992 amendment**, effective July 1, 1992, substituted all of the present language preceding "for a violation" for "The governing body of the municipality or county may, by ordinance, provide for penalties of not exceeding ninety days in jail nor three hundred dollars (\$300) fine".

### **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, distress 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.

#### **ANNOTATIONS**

**The 1992 amendment**, effective July 1, 1992, substituted the present section heading for "Other details"; substituted "shall" for "may" at the end of the introductory paragraph; and, in Subsection B, inserted "vendor audit requirements; applicable civil and criminal penalties", substituted "occupancy tax" for "tax" several times, and made minor stylistic changes throughout the subsection.

### **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.

## ANNOTATIONS

**Cross references.** — For requirements of occupancy tax quarterly reports, see 6-6-4.1 NMSA 1978.

**The 2016 amendment**, effective May 18, 2016, allowed municipalities and counties to use the proceeds from the occupancy tax to provide a required minimum revenue guarantee for air service to the municipality or county to increase the ability of tourists to more easily access the municipality's or county's tourist-related attractions, and defined "minimum revenue guarantee"; added new subsection designation "A" and redesignated former Subsections A through E as new Paragraphs (1) through (5) of Subsection A, in Subsection A, in the introductory paragraph, after "use the proceeds from the", added "occupancy", in Paragraph (1), after "administering the", added "occupancy", in Paragraph (2), after "tourist-related facilities", added "and", and after "attractions or", added "tourist-related", in Paragraph (4), after "municipality or county and", deleted "tourist" and added "tourist-related", after the second occurrence of "facilities", deleted "or", and after "attractions", added "and events", in Paragraph (5), after "tourist-related", deleted "events", after "facilities", deleted "and", after "attractions", added "and events", after the semicolon, deleted "or", and added new Paragraph (6) of Subsection A and redesignated former Subsection F as Paragraph (7) of Subsection A; and added new Subsection B.

**The 1996 amendment**, effective July 1, 1996, rewrote this section.

**The 1995 amendment**, effective June 16, 1995, substituted "subsection" for "paragraph" in the second sentence in Subsection F, and added Subsection H and redesignated former Subsections G and H as Subsections I and G.

**The 1989 amendment**, effective April 4, 1989, in Subsection B, inserted "welcome centers, tourist information centers, museums," and "in operation prior to January 1, 1989"; and, in Subsection F, added all of the language of the first sentence beginning with "except" and added the second sentence.

**The 1987 amendment**, effective June 19, 1987, inserted "or attractions" after "facilities" in Subsection F and added Subsection H.

**Operation of racetrack.** — The City of Raton cannot utilize its occupancy tax proceeds to operate the privately owned and operated La Mesa Park racetrack or help defer the expenses at the track. 1988 Op. Att'y Gen. No. 88-38.

**Promotion of facilities by toll-free telephone service.** — If a toll-free telephone service is used to promote the natural and man-made tourist attractions of the town of Red River, or to promote any facilities authorized by this section within Red River, then the expenses of operating and maintaining such a service would be an authorized expenditure of lodgers' tax revenues; to the extent that such telephone service is used to conduct any other business of the Chamber of Commerce, the Chamber would have to bear those costs. 1987 Op. Att'y Gen. No. 87-49.

### **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.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 58, § 12 made the act effective July 1, 1996.

### **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.

## ANNOTATIONS

**The 1996 amendment**, effective July 1, 1996, rewrote this section.

### **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.

## ANNOTATIONS

**The 2016 amendment**, effective May 18, 2016, amended the section to reflect amendments to Section 3-38-21 NMSA 1978; in Subsection A, after "authorized in",

deleted "Subsections B through F" and added "Paragraphs (2) through (5) of Subsection A", in Subsection B, Paragraph (1), after "pursuant to", deleted "Subsections" and added "Subsection", after "D", deleted "and E", after "pertaining to the", added "occupancy", and after "costs of collection and", deleted "attorneys'" and added "attorney", in Paragraph (2), after the first occurrence of "facilities", added "and", after the first occurrence of "attractions or", added "tourist-related", after "maintenance expenses of", deleted "such" and added "the tourist-related", after the second occurrence of "facilities", added "and", after the second occurrence of "attractions or", added "tourist-related"; and in Subsection C, after "at a rate", deleted "or rates".

**The 1996 amendment**, effective July 1, 1996, inserted "those amounts required to be expended pursuant to Subsections D and E of Section 3-38-15 NMSA 1978 and" near the beginning of Paragraph B(1), substituted "occupancy tax receipts" for "gross taxable rent" following "ten percent of the" in Paragraph B(1), substituted "the tourist-related facilities, attractions or transportation systems" for "the recreational facilities" at the beginning of Paragraph B(2), and inserted "attractions or transportation systems" at the end of Paragraph B(2).

**The 1987 amendment**, effective June 19, 1987, substituted "of Section 3-38-21 NMSA 1978" for "Section 14-37-22 NMSA 1953" in Subsection A; deleted "or" at the end in Subsection B(1); substituted the references to the Public Securities Act for "not exceeding seven percent a year payable annually or semiannually, but" and "not exceeding one year" in Subsection C; substituted "authorized in the Lodgers' Tax Act" for "therein authorized" in Subsection D; and substituted "3-31-2 through 3-31-6 NMSA 1978" for "14-30-2 through 14-30-6 NMSA 1953" in Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 C.J.S. Municipal Corporations § 1957.

### **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.

#### **ANNOTATIONS**

**The 1987 amendment**, effective June 19, 1987, deleted "or" at the end in Subsections B(1) and B(2); substituted "in excess of the rate authorized in the Public Securities Act and shall be paid as authorized in that act" for "exceeding seven percent a year payable annually or semiannually, but the first interest payment may be for any period not exceeding one year" in Subsection C; substituted "authorized in the Lodgers' Tax Act" for "therein authorized" in Subsection E; and substituted "3-31-10 and 3-31-11 NMSA 1978" for "14-30-9 and 14-30-10 NMSA 1953" in Subsection E.