

2023 act and with respect to the amount dedicated by a county pursuant to Section 3-60A-23 NMSA 1978.

**History:** 1978 Comp., § 7-1-6.13, enacted by Laws 1983, ch. 211, § 18; 1986, ch. 20, § 9; 1987, ch. 45, § 9; 1989, ch. 326, § 11; 1990, ch. 99, § 47; 1991, ch. 176, § 16; 1993, ch. 30, § 2; 1997, ch. 125, § 3; 2003, ch. 205, § 1; 2005, ch. 338, § 1; 2006, ch. 75, § 32; 2008, ch. 51, § 1; 2014, ch. 79, § 1; 2019, ch. 270, § 6; 2021 (1st S.S.), ch. 2, § 4; 2023, ch. 112, § 13.

### **ANNOTATIONS**

**The 2023 amendment**, effective July 1, 2024, provided that a transfer pursuant to this section shall be adjusted for a distribution made to the metropolitan redevelopment fund; in Subsection C, changed "5 of this 2021 act" to "7-1-6.67 NMSA 1978" and changed "2 of this 2021 act" to "5-10-17 NMSA 1978"; and added Subsection D.

### **7-1-6.14. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 88, § 21 repealed 7-1-6.14 NMSA 1978, as enacted by Laws 1983, ch. 211, § 19, relating to transfers to counties or municipalities of amounts of net receipts attributable to county or municipal gasoline tax, effective May 16, 1990. For provisions of former section, see the 1989 NMSA on *NMOneSource.com*.

### **7-1-6.15. Adjustments of distributions or transfers to municipalities or counties.**

A. The provisions of this section apply to:

- (1) any distribution to a municipality pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;
- (2) any transfer to a municipality with respect to any local option gross receipts tax imposed by that municipality;
- (3) any transfer to a county with respect to any local option gross receipts tax imposed by that county;
- (4) any distribution to a county pursuant to Section 7-1-6.16 or 7-1-6.47 NMSA 1978;
- (5) any distribution to a municipality or a county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

(6) any transfer to a county with respect to any tax imposed in accordance with the Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978];

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

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

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

(10) any distribution to a municipality or a county of cannabis excise taxes pursuant to the Cannabis Tax Act.

B. Before making a distribution or transfer specified in Subsection A of this section to a municipality or county for the month, amounts comprising the net receipts shall be segregated into two mutually exclusive categories. One category shall be for amounts relating to the current month, and the other category shall be for amounts relating to prior periods. The total of each category for a municipality or county shall be reported each month to that municipality or county. If the total of the amounts relating to prior periods is less than zero and its absolute value exceeds the greater of one hundred dollars (\$100) or an amount equal to twenty percent of the average distribution or transfer amount for that municipality or county, then the following procedures shall be carried out:

(1) all negative amounts relating to any period prior to the three calendar years preceding the year of the current month, net of any positive amounts in that same time period for the same taxpayers to which the negative amounts pertain, shall be excluded from the total relating to prior periods. Except as provided in Paragraph (2) of this subsection, the net receipts to be distributed or transferred to the municipality or county shall be adjusted to equal the amount for the current month plus the revised total for prior periods; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) may, in the secretary's discretion, waive recovery of any portion of the recoverable amount, subject to approval by the state board of finance; and

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

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

G. On or before September 1 of each year beginning in 2016, the secretary shall report to the state board of finance and the legislative finance committee the total recoverable amount waived pursuant to Subparagraph (b) of Paragraph (2) and Paragraph (3) of Subsection E of this section for each municipality and county in the prior fiscal year.

H. The secretary is authorized to decrease a distribution or transfer to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act [6-22-1 to 6-22-3 NMSA 1978] or to redirect a distribution or transfer to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority. Upon direction to decrease a distribution or transfer or notice to redirect a distribution or transfer to a municipality or county, the secretary shall decrease or redirect the next designated distribution or transfer, and succeeding distributions or transfers as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or other person designated by the secretary of finance and administration or to the New Mexico finance authority pursuant to written agreement to pay the debt service to avoid default on qualified local revenue bonds or meet other local revenue bond, loan or other debt obligations of the municipality or county to the New Mexico finance authority. A decrease to or redirection of a distribution or transfer pursuant to this subsection that arose:

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

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

I. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the secretary shall temporarily withhold the balance of a distribution to a municipality or county, net of any decrease or redirected amount pursuant to Subsection H of this section and any recoverable amount pursuant to Paragraph (2) of Subsection B of this section, that has failed to submit an audit report required by the Audit Act [12-6-1 to 12-6-15 NMSA 1978] or a financial report required by Subsection F of Section 6-6-2 NMSA 1978. The amount to be withheld, the source of the withheld distribution and the number of months that the distribution is to be withheld shall be as directed by the secretary of finance and administration. A distribution withheld pursuant to this subsection shall remain in the tax administration suspense fund until distributed to the municipality or county and shall not be distributed to the general fund. An amount withheld pursuant to this subsection shall be distributed to the municipality or county upon direction of the secretary of finance and administration.

J. As used in this section:

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

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

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

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

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

(c) if a municipality or county has not received distributions or transfers of net receipts for twelve or more months, the monthly average of net receipts distributed or

transferred to the municipality or county preceding the current month multiplied by twelve;

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

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

**History:** 1978 Comp., § 7-1-6.15, enacted by Laws 1983, ch. 211, § 20; 1986, ch. 20, § 10; 1987, ch. 169, § 2; 1988, ch. 72, § 5; 1989, ch. 326, § 12; 1990, ch. 99, § 48; 1991, ch. 9, § 13; 1991, ch. 176, § 17; 1992, ch. 105, § 4; 1993, ch. 30, § 3; 1994, ch. 54, § 1; 1996, ch. 28, § 3; 1999, ch. 189, § 1; 2007, ch. 331, § 1; 2011, ch. 106, § 3; 2015, ch. 89, § 1; 2015, ch. 100, § 1; 2021 (1st S.S.), ch. 4, § 49.

## ANNOTATIONS

**The 2021 (1st S.S.) amendment**, effective June 29, 2021, distributed a portion of the cannabis excise tax revenues to municipalities and counties; and in Subsection A, added Paragraph A(10).

**The 2015 amendment**, effective July 1, 2015, changed the procedures for adjusting certain distributions and transfers to municipalities and counties; in Paragraph (1) of Subsection A, after "municipality", deleted "of gross receipts taxes", after "7-1-6.4", deleted "NMSA 1978 or of interstate telecommunications gross receipts tax pursuant to Section", and after "7-1-6.36", added "or 7-1-6.46"; in Paragraph (4) of Subsection A, after "7-1-6.16", added "or 7-1-6.47"; deleted Paragraph (7) of Subsection A and redesignated the succeeding paragraphs accordingly; deleted former Subsections B through E; added new Subsections B through G; redesignated former Subsections F and G as Subsections H and I, respectively; in Subsection H, after "decrease a distribution", added "or transfer", after "to redirect a distribution", added "or transfer", after "decrease a distribution", added "or transfer", after "notice to redirect a distribution", added "or transfer", after "designated distribution", added "or transfer", after "succeeding distributions", added "or transfers", and added the last sentence of the introductory paragraph of Subsection H; added Paragraphs (1) and (2) of Subsection H; in Subsection I, after "temporarily withhold", added "the balance of", after "municipality or county", added "net of any decrease or redirected amount pursuant to Subsection H of this section and any recoverable amount pursuant to Paragraph (2) of Subsection B of this section", and added the last sentence of Subsection I; and added Subsection J.

**The 2011 amendment**, effective July 1, 2012, authorized the secretary of finance and administration to order the secretary of taxation and revenue to temporarily withhold