

Meaning of the term "erroneous". — The term "erroneous" in 7-1-6.15(B) NMSA 1978 refers to distributions or transfers of gross receipts tax revenue that were in error due to a taxpayer filing or reporting error by a taxpayer as well as an error made by the department. *City of Eunice v. N.M. Taxation & Revenue Dep't*, 2014-NMCA-085, cert. granted, 2014-NMCERT-008.

Time limitation to recover over-payment of gross receipts taxes to a municipality. — Where the taxpayer, who paid gross receipts taxes imposed by the state, county and municipality, determined that it had mistakenly paid taxes to the municipality because its place of business was actually in the unincorporated part of the county and not within the municipal boundaries; the taxpayer filed amended returns changing the reporting location from the municipality to the county; in January 2013, the department granted the taxpayer a refund of taxes going back to January 2009; and the department claimed that the municipality had to refund taxes distributed to the municipality based on the taxpayer's original returns from January 2009 in excess of \$2.3 million, 7-1-6.15(C) NMSA 1978 barred the department from recovering any excess state and municipal taxes revenues distributed to the municipality prior to January 1, 2012 and had statutory authority to recover only \$120,552 from the municipality for erroneous distributions of taxes made in 2012. *City of Eunice v. N.M. Taxation & Revenue Dep't*, 2014-NMCA-085, cert. granted, 2014-NMCERT-008.

7-1-6.16. County equalization distribution.

A. Beginning on September 15, 1989 and on September 15 of each year thereafter, the department shall distribute to any county that has imposed or continued in effect during the state's preceding fiscal year a county gross receipts tax pursuant to Section 7-20E-9 NMSA 1978 an amount equal to:

(1) the product of a fraction, the numerator of which is the county's population and the denominator of which is the state's population, multiplied by the annual sum for the county; less

(2) the net receipts received by the department during the report year, including any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, attributable to the county gross receipts tax at a rate of one-eighth percent; provided that for any month in the report year, if no county gross receipts tax was in effect in the county in the previous month, the net receipts, for the purposes of this section, for that county for that month shall be zero.

B. If the amount determined by the calculation in Subsection A of this section is zero or a negative number for a county, no distribution shall be made to that county.

C. As used in this section:

(1) "annual sum" means for each county the sum of the monthly amounts for those months in the report year that follow a month in which the county had in effect a county gross receipts tax;

(2) "monthly amount" means an amount equal to the product of:

(a) the net receipts received by the department in the month attributable to the state gross receipts tax plus five percent of the total amount of deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month plus five percent of the total amount of deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month; and

(b) a fraction, the numerator of which is one-eighth percent and the denominator of which is the tax rate imposed by Section 7-9-4 NMSA 1978 in effect on the last day of the previous month;

(3) "population" means the most recent official census or estimate determined by the United States census bureau for the unit or, if neither is available, the most current estimated population for the unit provided in writing by the bureau of business and economic research at the university of New Mexico; and

(4) "report year" means the twelve-month period ending on the July 31 immediately preceding the date upon which a distribution pursuant to this section is required to be made.

History: 1978 Comp., § 7-1-6.16, enacted by Laws 1983, ch. 213, § 27; 1986, ch. 20, § 11; 1989, ch. 216, § 1; 2004, ch. 116, § 4.

ANNOTATIONS

The 2004 amendment, effective January 1, 2005, amended Subsection C to divide Paragraph (2) into Subparagraphs (a) and (b), to delete from Subparagraph (a), "multiplied by" and to insert in its place: "plus five percent of the total amount of deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month plus five percent of the total amount of deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month; and".

The 1989 amendment, effective June 16, 1989, in the introductory paragraph of Subsection A substituted "1989" for "1986", inserted "during the state's preceding fiscal year", and deleted "for general purposes" following "tax"; rewrote Paragraph A(1); in Paragraph A(2) rewrote the first sentence and added the second sentence; added Paragraphs C(1) and C(2); redesignated former Subsection C as Paragraph C(3) while deleting therein "for the purposes of this section" following "means"; and added Paragraph C(4).

7-1-6.17. Repealed.