AN ACT

RELATING TO TAXATION; CREATING A 2020 INCOME TAX REBATE; CREATING A TEMPORARY GROSS RECEIPTS TAX DEDUCTION FOR CERTAIN FOOD AND BEVERAGE ESTABLISHMENTS; DISTRIBUTING THE LOSS OF LOCAL OPTION GROSS RECEIPTS TAX REVENUE ATTRIBUTABLE TO THE DEDUCTION TO LOCAL GOVERNMENTS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Tax Administration Act is enacted to read:

"DISTRIBUTION--OFFSET FOR FOOD AND BEVERAGE ESTABLISHMENTS DEDUCTION.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of the deductions claimed pursuant to Section 3 of this 2021 act for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2021 plus one and two hundred twenty-five thousandths percent.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a county in an amount, subject to

any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of the total deductions claimed pursuant to Section 3 of this 2021 act for the month by taxpayers from business locations:

(1) within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2021 that are imposed in the county; and

(2) in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2021 that are imposed in the county area not within a municipality.

C. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act.

D. For the purposes of this section, "business locations attributable to the municipality" means business locations:

(1) within the municipality;

(2) on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of the municipality;

(3) outside the boundaries of the municipality on land owned by the municipality; and

(4) on an Indian reservation or pueblo grant in an area that is contiguous to the municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

(a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and

(b) the governing body of the municipality has submitted a copy of the contract to the secretary."

SECTION 2. A new section of the Income Tax Act is enacted to read:

"2020 INCOME TAX REBATE.--

A. A resident who is not a dependent of another individual and has received a working families tax credit for which the taxpayer was eligible to claim against the resident's income tax liability for taxable year 2020 may be eligible for a tax rebate of six hundred dollars ($600); provided that the resident had the following adjusted gross income for taxable year 2020:

(1) for single individuals, an adjusted gross income of thirty-one thousand two hundred dollars ($31,200) or less; and

(2) for heads of household, surviving spouses and married individuals filing joint returns, an adjusted gross income of thirty-nine thousand dollars ($39,000) or less.

B. The rebate provided by this section may be deducted from the taxpayer's New Mexico income tax liability.

C. If the amount of rebate exceeds the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

D. The department may require a taxpayer to claim the rebate provided by this section on forms and in a manner required by the department.

E. The rebate provided by this section shall not be allowed after June 30, 2022."

SECTION 3. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS--FOOD OR BEVERAGE ESTABLISHMENTS.--

A. Beginning March 1, 2021 and prior to July 1, 2021, receipts of a food or beverage establishment from the sale of prepared food or non-packaged beverages that are served or picked up at the food or beverage establishment

by or delivered to customers for immediate consumption may be deducted from gross receipts.

B. The deduction provided by this section shall be applied only to gross receipts remaining after all other allowable deductions available under the Gross Receipts and Compensating Tax Act have been taken and shall be separately stated by the taxpayer.

C. As used in this section:

(1) "craft distiller" means an establishment owned or managed by person issued a craft distiller's license pursuant to Section 60-6A-6.1 NMSA 1978 that is in good standing;

(2) "dispenser" means an establishment that is held out to the public as a place where alcoholic beverages are prepared and served for on-premises consumption to the general public in consideration of payment and that has the facilities and employees necessary for preparing and serving alcoholic beverages; provided that the dispenser has been issued a license pursuant to the Liquor Control Act as a dispenser;

(3) "food or beverage establishment" means a craft distiller; dispenser; mobile food service establishment; restaurant; small brewer; or winegrower;

(4) "mobile food service establishment" means a mobile establishment where meals are prepared for

sale to or consumption by the general public either on or off the premises and has been issued a permit pursuant to Section 25-1-7 NMSA 1978 that is in good standing;

(5) "restaurant" means an establishment that is held out to the public as a place where meals and beverages are prepared and primarily intended to be served for on-premises consumption to the general public in consideration of payment and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided the restaurant has been issued a permit pursuant to Section 25-1-7 NMSA 1978 that is in good standing and, if the restaurant serves alcoholic beverages, has been issued a license pursuant to Section 60-6A-4 NMSA 1978. "Restaurant" does not include an establishment commonly known as a fast food restaurant that dispenses food intended to be ordered, prepared and served quickly, with minimal or no table service, and prepared in quantity by a standardized method for consumption on and off premises, and that tends to have any of the following characteristics:

(a) a menu consisting primarily of pre-cooked items or items prepared in advance and heated quickly;

(b) placement of orders at a fast serve drive-through or walk-up window;

(c) service of food solely in

disposable wrapping or containers; or

(d) a menu that exclusively sells hamburgers, sandwiches, salads and other fast foods;

(6) "small brewer" means an establishment owned or managed by a person issued a small brewer's license pursuant to Section 60-6A-26.1 NMSA 1978 that is in good standing; and

(7) "winegrower" means an establishment owned or managed by a person issued a winegrower's license pursuant to Section 60-6A-11 NMSA 1978 that is in good standing."

SECTION 4. TEMPORARY PROVISION--AMOUNTS IN LIEU OF GROSS RECEIPTS.--Any amount passed on to a customer in lieu of a gross receipts tax on receipts for which a food or beverage establishment may deduct pursuant to Section 3 of this 2021 act shall not be considered gross receipts.

SECTION 5. APPROPRIATION.--Three hundred thousand dollars ($300,000) is appropriated from the general fund to the taxation and revenue department for expenditure in fiscal years 2021 and 2022 to administer the income tax rebate and gross receipts tax deduction provided by this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2022 shall revert to the general fund.

SECTION 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect

immediately.