

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2016-89**

3 **INTRODUCED BY:**

4
5 Councilor Joseph M. Maestas
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10 **A RESOLUTION**

11 **CALLING ON THE NEW MEXICO STATE LEGISLATURE TO TAKE IMMEDIATE**
12 **ACTION DURING THE 2017 LEGISLATIVE SESSION TO ENACT A MUNICIPAL**
13 **TELECOMMUNICATIONS TAX ACT THAT WOULD AUTHORIZE**
14 **MUNICIPALITIES TO COLLECT FROM TELECOMMUNICATIONS PROVIDERS A**
15 **MUNICIPAL TELECOMMUNICATIONS TAX ON THE TELECOMMUNICATIONS**
16 **PROVIDER'S GROSS RECEIPTS FROM TELECOMMUNICATIONS SERVICE.**

17
18 **WHEREAS**, up to 75% of a municipality's general fund revenue is derived from gross
19 receipts taxes; and

20 **WHEREAS**, since the economic downturn of 2008, municipalities in the state of New
21 Mexico continue to be negatively impacted, which has resulted in significant declines in revenue
22 available for local governments; and

23 **WHEREAS**, the New Mexico Municipal League (NMML) recognizes that gross receipts
24 taxes are an unstable funding source whose levels are dependent on the health of the economy;
25 and

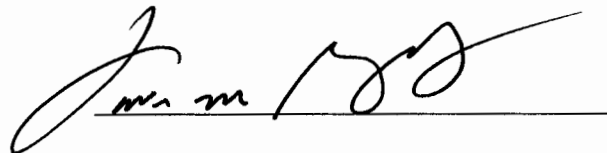
1 **WHEREAS**, NMSA 1978, §3-18-2 prohibits any municipality from imposing any excise
2 tax, including but not limited to sales taxes, gross receipts and excise taxes on any incident
3 relating to tobacco, liquor, motor fuels and motor vehicles; and

4 **WHEREAS**, the NMML recognizes that there is a need for the New Mexico State
5 Legislature to enact legislation that would authorize municipalities to collect from
6 telecommunications providers a municipal telecommunications tax on the telecommunications
7 provider's gross receipts from telecommunications service.

8 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**
9 **CITY OF SANTA FE** that the Governing Body hereby calls on the New Mexico State
10 Legislature to take immediate action during the 2017 legislative session to enact a Municipal
11 Telecommunications Tax Act that would authorize municipalities to collect from
12 telecommunications providers a municipal telecommunications tax on the telecommunications
13 provider's gross receipts from telecommunications service. The Municipal Telecommunications
14 Tax Act is attached hereto as Exhibit "A".

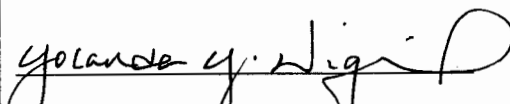
15 **BE IT FURTHER RESOLVED** that the City Clerk is directed to forward a copy of this
16 resolution to the City's State legislative delegation, the New Mexico Municipal League and the
17 City's lobbyist.

18 PASSED, APPROVED, and ADOPTED this 14th day of December, 2016.


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21 JAVIER M. GONZALES, MAYOR

22 ATTEST:

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25 YOLANDA Y. VIGIL, CITY CLERK

1 APPROVED AS TO FORM:

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4 KELLEY A. BRENNAN, CITY ATTORNEY

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25 *M/Legislation/Resolutions 2016/2016-89 State Telecommunications Tax Act*

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_____ **BILL** _____

53ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

AN ACT

RELATING TELECOMMUNICATIONS SERVICES; ENACTING A MUNICIPAL TELECOMMUNICATIONS TAX ACT.

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

Section 1. SHORT TITLE. -- Sections _____ through _____ NMSA 1978 may be cited as the "Municipal Telecommunications Tax Act".

Section 2. DEFINITIONS. -- As used in the Municipal Telecommunications Tax Act, Sections _____ through _____ NMSA 1978:

A. "department" means the department of taxation and revenue.

B. "customer":

(1) Subject to Subsections (B)(2) and (3), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.

(2) For purposes of this section and the following sections, "customer" means:

1 (a) the person who is obligated under a contract with a
2 telecommunications provider to pay for telecommunications service received under the contract;

3 or

4 (b) if the end user is not the person described in Subsection (2)(b)(i),
5 the end user of telecommunications service.

6 (3) "customer" does not include a reseller:

7 (a) of telecommunications service; or

8 (b) for mobile telecommunications service, of a serving carrier
9 under an agreement to serve the customer outside the telecommunications provider's licensed
10 service area.

11 C. "end user" means the person who uses a telecommunications service. For
12 purposes of telecommunications service provided to a person who is not an individual, "end user"
13 means the individual who uses the telecommunications service on behalf of the person who is
14 provided the telecommunications service.

15 D. "gross receipts from telecommunications service" means the revenue that a
16 telecommunications provider receives for telecommunications service rendered except for
17 amounts collected or paid as:

18 (1) a tax, fee, or charge:

19 (a) imposed by a governmental entity;

20 (b) separately identified as a tax, fee, or charge in the transaction
21 with the customer for the telecommunications service; and

22 (c) imposed only on a telecommunications provider;

23 (2) gross receipts taxes collected by the telecommunications provider from a
24 customer under NMSA 7-9-1 et seq.; or

25 (3) interest, a fee, or a charge that is charged by a telecommunications

1 provider on a customer for failure to pay for telecommunications service when payment is due.

2 “gross receipts from telecommunications service” includes a charge necessary to
3 complete a sale of a telecommunications service.

4 E. “mobile telecommunications service” is as defined in the Mobile
5 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

6 F. “municipality” means a city or town.

7 G. “place of primary use”:

8 (1) For telecommunications service other than mobile telecommunications
9 service, means the street address representative of where the customer's use of the
10 telecommunications service primarily occurs, which shall be:

11 (a) the residential street address of the customer; or

12 (b) the primary business street address of the customer; or

13 (2) For mobile telecommunications service, is as defined in the Mobile
14 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

15 H. Notwithstanding where a call is billed or paid, “service address” means:

16 (1) If the location described in this Subsection (H) (1) is known, the location
17 of the telecommunications equipment:

18 (a) to which a call is charged; and

19 (b) from which the call originates or terminates;

20 (2) If the location described in Subsection (H)(1) is not known but the
21 location described in this Subsection (H)(2) is known, the location of the origination point of the
22 signal of the telecommunications service first identified by:

23 (a) the telecommunications system of the telecommunications
24 provider; or

25 (b) if the system used to transport the signal is not a system of the

1 telecommunications provider, information received by the telecommunications provider from its
2 service provider; or

3 (3) if the locations described in Subsection (H)(1) or (2) are not known, the
4 location of a customer's place of primary use.

5 I. "telecommunications provider" means:

6 (1) Subject to Subsections (I)(2) and (I)(3), a person that:

7 (a) owns, controls, operates, or manages a telecommunications
8 service; or

9 (b) engages in an activity described in Subsection (I)(1)(a) for the
10 shared use with or resale to any person of the telecommunications service.

11 (2) A person described in Subsection (I)(1) is a telecommunications provider
12 whether or not the public regulation commission of New Mexico regulates:

13 (a) that person; or

14 (b) the telecommunications service that the person owns, controls,
15 operates, or manages.

16 J. "telecommunications service" means the electronic conveyance, routing, or
17 transmission of audio, data, video, voice, or any other information or signal to a point, or among
18 or between points, other than mobile telecommunications service, that originates and terminates
19 within the boundaries of this state.

20 (1) "telecommunications service" includes:

21 (a) an electronic conveyance, routing, or transmission with respect
22 to which a computer processing application is used to act:

23 (i) on the code, form, or protocol of the content;

24 (ii) for the purpose of electronic conveyance, routing, or
25 transmission; and

- 1 (iii) regardless of whether the service:
- 2 (A) is referred to as voice over Internet protocol
- 3 service; or
- 4 (B) is classified by the Federal Communications
- 5 Commission as enhanced or value added;
- 6 (b) an 800 service;
- 7 (c) a 900 service;
- 8 (d) a fixed wireless service;
- 9 (e) a mobile wireless service;
- 10 (f) a postpaid calling service;
- 11 (g) a prepaid calling service;
- 12 (h) a prepaid wireless calling service; or
- 13 (i) a private communications service.
- 14 (2) “telecommunications service” does not include:
- 15 (a) advertising, including directory advertising;
- 16 (b) an ancillary service;
- 17 (c) a billing and collection service provided to a third party;
- 18 (d) a data processing and information service if:
- 19 (i) the data processing and information service allows data
- 20 to be:
- 21 (A) acquired;
- 22 (B) generated;
- 23 (C) processed;
- 24 (D) retrieved; or
- 25 (E) stored; and

1 (ii) delivered by an electronic transmission to a purchaser;
2 and
3 (iii) the purchaser's primary purpose for the underlying
4 transaction is the processed data or information;
5 (e) installation or maintenance of the following on a customer's
6 premises:
7 (i) equipment; or
8 (ii) wiring;
9 (f) Internet access service;
10 (g) a paging service;
11 (h) a product transferred electronically, including:
12 (i) music;
13 (ii) reading material;
14 (iii) a ring tone;
15 (iv) software; or
16 (v) video;
17 (i) a radio and television audio and video programming service:
18 (i) regardless of the medium; and
19 (ii) including:
20 (A) furnishing conveyance, routing, or transmission
21 of a television audio and video programming service by a programming service provider;
22 (B) cable service as defined in 47 U.S.C. Sec.
23 522(6); or
24 (C) audio and video programming services delivered
25 by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;

1 (j) a value-added nonvoice data service; or

2 (k) tangible personal property.

3 (3) Mobile “telecommunications service” is as defined in the Mobile
4 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

5 (a) that originates and terminates within the boundaries of one state;

6 and

7 (b) only to the extent permitted by the Mobile Telecommunications
8 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

9 (4) an ancillary service, “ancillary service” means a service associated with,
10 or incidental to, the provision of telecommunications service. “Ancillary service” includes:

11 (a) a conference bridging service;

12 (b) a detailed communications billing service;

13 (c) directory assistance;

14 (d) a vertical service; or

15 (e) a voice mail service.

16 (K) “telecommunications tax or fee”

17 (1) Except as provided in Subsection (K)(2), “telecommunications tax or
18 fee” means any of the following imposed by a municipality on a telecommunications provider:

19 (a) a tax;

20 (b) a license;

21 (c) a fee;

22 (d) a license fee;

23 (e) a license tax;

24 (f) a franchise fee; or

25 (g) a charge similar to a tax, license, or fee described in Subsections

1 (K)(1)(a) through (g).

2 (2) "telecommunications tax or fee" does not include:

3 (a) the municipal telecommunications license tax authorized by this
4 part; or

5 (b) a tax, fee, or charge that is imposed:

6 (i) on telecommunications providers; and

7 (ii) on persons who are not telecommunications providers.

8 Section 3. AUTHORITY OF MUNICIPALITY TO LEVY A
9 TELECOMMUNICATI-ONS TAX. -- A municipality may levy on and provide that there is
10 collected from a telecommunications provider a municipal telecommunications tax on the
11 telecommunications provider's gross receipts from telecommunications service that are attributed
12 to the municipality if the gross receipts are from a transaction for telecommunications service that
13 is located within the municipality.

14 A. To levy and provide for the collection of a municipal telecommunications license
15 tax under this part, the municipality shall adopt an ordinance that complies with the requirements
16 of NMSA 1978, § 3-17-5.

17 B. A municipal telecommunications license tax imposed under this part shall be at a
18 rate of up to 3.5% of the telecommunications provider's gross receipts from telecommunications
19 service that are attributed to the municipality.

20 C. A telecommunications provider may recover the amounts paid in municipal
21 telecommunications license taxes from the customers of the telecommunications provider within
22 the municipality imposing the municipal telecommunications license tax through a charge that is
23 separately identified in the statement of the transaction with the customer as the recovery of a tax.

24 C. A telecommunications tax or fee imposed under Subsection (3)(B) shall be
25 imposed:

- 1 (a) by ordinance; and
- 2 (b) on a competitively neutral basis.

3 Section 4. ATTRIBUTING THE GROSS RECEIPTS FROM
4 TELECOMMUNICATIONS SERVICE TO A MUNICIPALITY. --

5 A. The gross receipts from a telecommunications service are attributed to a
6 municipality if the gross receipts are from a transaction for telecommunications service that is
7 located within the municipality:

- 8 (1) for purposes of gross receipts under section 7-9-1 et seq.; and
- 9 (2) determined in accordance with Section 2.

10 B. The rate imposed on the gross receipts for telecommunications service shall be
11 determined in accordance with Subsection (2)(b) if the location of a transaction for
12 telecommunications service is determined under Subsection (1) to be a municipality other than
13 the municipality in which is located:

14 (1) for telecommunications service other than mobile telecommunications
15 service, the customer's service address; or

16 (2) for mobile telecommunications service, the customer's primary place of
17 use.

18 C. The rate imposed on the gross receipts for telecommunications service described
19 in Subsection (2)(a) shall be the lower of:

20 (1) the rate imposed by the taxing jurisdiction in which the transaction is
21 located under Subsection (1); or

22 (2) the rate imposed by the municipality in which it is located:

23 (a) for telecommunications service other than mobile
24 telecommunications service, the customer's service address; or

25 (b) for mobile telecommunications service, the customer's primary
place of use.

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Section 5. PROHIBITED ACTIONS BY A MUNICIPALITY. --

A. Subject to the other provisions of this section, a municipality may not levy or collect a telecommunications tax or fee on a person except for a telecommunications tax or fee imposed by the municipality:

(1) on a telecommunications provider to recover the management costs of the municipality caused by the activities of the telecommunications provider in the right-of-way of a municipality if the telecommunications tax or fee:

(a) is imposed in accordance with Section 3; and

(b) is not related to:

(i) a municipality's loss of use of a highway as a result of the activities of the telecommunications provider in a right-of-way; or

(ii) increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way; or

(2) on a person that:

(a) is not subject to a municipal telecommunications license tax under this part; and

(b) locates telecommunications facilities in the municipality.

B. Subsection (A)(1), above, may not be interpreted as exempting a telecommunications provider from complying with any ordinance:

(1) related to excavation, construction, or installation of a telecommunications facility; and

(2) that addresses the safety and quality standards of the municipality for excavation, construction, or installation.