

DFA Local Government Division Budget & Finance Bureau

Lodger's Tax Training

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What is Lodgers Tax?

Note: Lodgers Tax is also known as Occupancy Tax

Allows an optional tax revenue for municipalities or counties on persons using commercial lodging accommodations.

Statutes and Rules for Lodgers Tax

Two Source Documents for Guidance

Enacted in 1969, the Lodgers' Tax Act (Sections 3-38-13 through 3-38-25, NMSA 1978)

Enacted in 1996, Lodgers Tax Quarterly Report (Rule 2 NMAC 105.2)

Statutory Definitions

Section 3-38-14

“**Lodging**” refers to a short term dwelling (temporary quarters).

“**Temporary lodging**” means lodgings for the purpose of housing a vendee within proximity of the vendee’s employment or job location.

“**Vendee**” means a person or the person’s agent furnishing lodgings in the exercise of the taxable service of lodging.

“**Person**” means a corporation, firm, other body corporate, partnership, association or individual. “Person” does not include the federal government, state government, or any political subdivision of the state.

Vendee Exemptions

Section 3-38-16

The occupancy tax shall not apply:

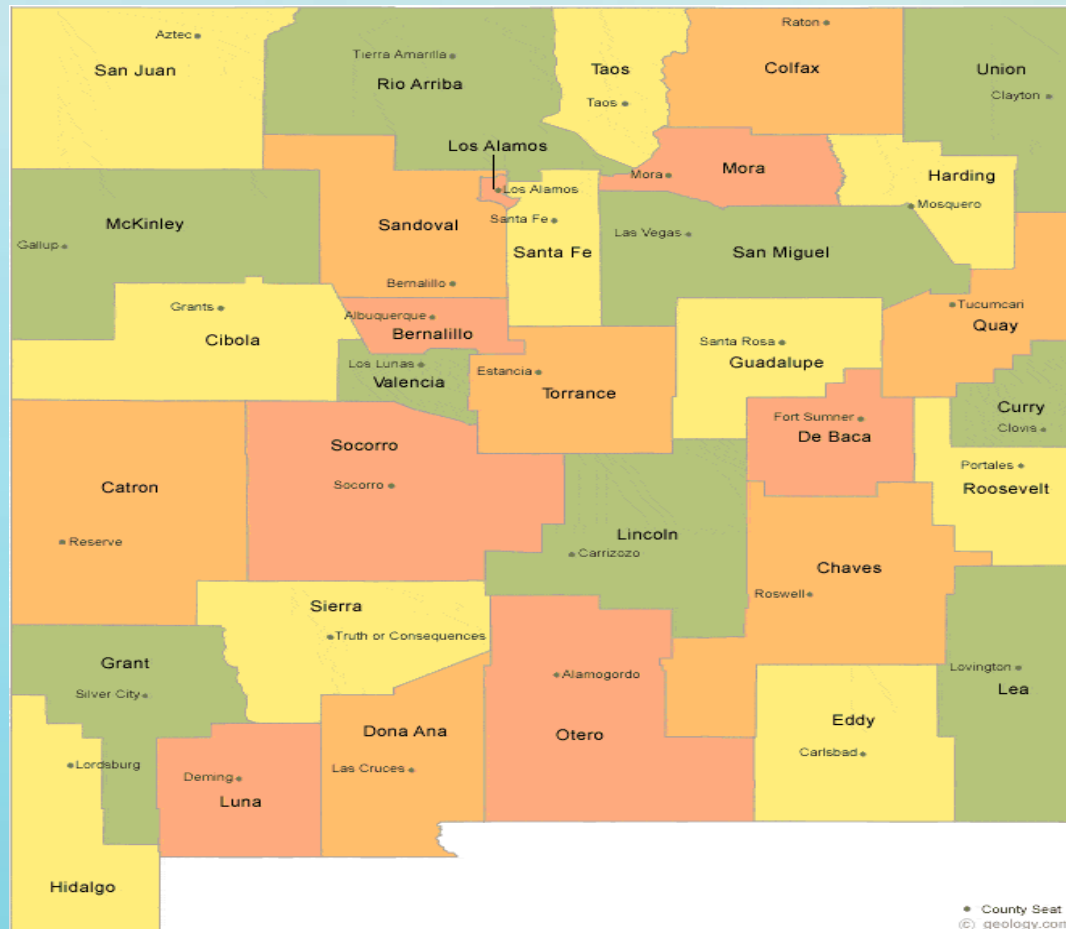
- If vendee has been a permanent resident of the taxable premises for a period of at least 30 consecutive days, unless those premises are temporary lodging.
- If vendee has entered into a written agreement for lodgings at the taxable premises for a period of at least 30 consecutive days, unless those premises are temporary lodging.
- If rent paid by vendee is less than \$2 a day.
- If lodging accommodations are at institutions of the federal government, state or any political subdivision; at religious, charitable, educational or philanthropic institutions.
- To clinics, hospitals or other medical facilities; or to privately owned and operated convalescent homes.

Who Can Impose Lodgers Tax?

Section 3-38-15: Authorization of tax; limitations on use of proceeds

Imposed Through Local Ordinance

Municipalities may impose by ordinance an occupancy tax for revenues on lodging within the municipality, of no more than 5% of gross taxable rent.



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 of no more than 5% of gross taxable rent.

What are the Ordinance Requirements?

Section 3-38-20

The municipalities and counties ordinance imposing an occupancy tax shall;

- A. Have 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, 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;
 - 1. the accounts and other records to be maintained in connection with the occupancy tax.
 - 2. procedure for making refunds and resolving disputes relating to the occupancy tax.
 - 3. the procedure for preservation and destruction of records.
 - 4. inspection and investigation; vendor audit requirements; applicable civil and criminal penalties.
 - 5. procedures of liens, distraint and sales to satisfy such liens.
- 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.

What are the limitations on the use of Lodgers Tax Proceeds?

Section 3-38-15: Authorization of tax; limitations on use of proceeds

- **Section 3-38-15.D:** Occupancy tax collected based on the **first 30 days of rental** shall be used only for promotional purposes (advertising, publicizing and promoting tourist-related facilities and attractions and tourist-related events) based on the following:
 - 1) Tax of 2% or less – at least 25% of proceeds for this purpose
 - 2) Tax >2% and not in Class A county – at least 50% of proceeds for this purpose from the first 3% of tax and not less than 25% of proceeds in excess of 3% (**formula on next slide**)
 - 3) Tax >2% and Class A county – at least 50% of proceeds for this purpose
- **Section 3-38-15.E:** Occupancy tax collected based on the **first 30 days of rental** in excess of the requirements of Section 3-38-15.D may be used for any purpose authorized in Section 3-38-21.

Formula Examples

$$\begin{aligned}
 & [(3\% / \text{Tax Rate}) * \text{Proceeds}] * \frac{1}{2} + \\
 & [((\text{Tax Rate} - 3\%) / \text{Tax Rate}) * \text{Proceeds}] * \frac{1}{4} = \\
 & \text{Amount of Lodgers' Tax Proceeds to apply to 'H in B'}
 \end{aligned}$$

Example 1

Tax Rate = 5%

Proceeds = \$10,000

$[(3\% / 5\%) * \$10,000] * \frac{1}{2}$	\$3,000
$[((5\% - 3\%) / 5\%) * \$10,000] * \frac{1}{4}$	<u>\$1,000</u>
Minimum on 'H in B'	\$4,000

Example 2

Tax Rate = 4%

Proceeds = \$10,000

$[(3\% / 4\%) * \$10,000] * \frac{1}{2}$	\$3,750
$[((4\% - 3\%) / 4\%) * \$10,000] * \frac{1}{4}$	<u>\$0,625</u>
Minimum on 'H in B'	\$4,375

Revenue Calculations Simplified

Quarterly Proceeds: \$ 10,000.00
Tax Rate Imposed: 5%

This links to the quarterly lodgers tax proceeds reported on the "Revenue" tab.

YTD Proceeds: \$ -

This links to the YTD lodgers tax proceeds reported on the "Revenue" tab.

Formula:

$$[(3\% / \text{Tax Rate Imposed}) * \text{Quarterly Proceeds}] * 1/2 + [((\text{Tax Rate Imposed} - 3\% / \text{Tax Rate Imposed}) * \text{Quarterly Proceeds}) * .25]$$

Calculation of minimum amounts to be used for promotional purposes:

Quarterly:

\$ 4,000.00

YTD:

\$ -

Instructions: The **Quarterly Proceeds** (Cell B3) and **YTD Proceeds** (Cell F3) are linked to the "REVENUE" spreadsheet. The **Tax Rate Imposed** (Cell B4) is also linked to the "REVENUE" spreadsheet. The "Calculation" amounts are the minimum dollar amount that must be used for promotional purposes. These calculated amounts are then linked back to the "REVENUE" spreadsheet.

Other promotional requirements:

- ~ If a municipality or county imposes an occupancy tax of no more than 2%, then not less than one-fourth (25%) of tax proceeds shall be used for promotional purposes. [Statute 3-38-15D(1)]
- ~ If a municipality is located in a class A county, or a county is a class A county, that is imposing an occupancy tax of more than 2%, then not less than one-half (50%) of tax proceeds shall be used for promotional purposes. [Statute 3-38-15D(3)]

Excel spreadsheet can be found under "Lodgers Tax Distribution" section on this link:
http://www.nmdfa.state.nm.us/Financial_Distribution.aspx

What are Other Eligible Uses of Lodgers Tax?

After meeting the requirements for promotional purposes:

- **Section 3-38-15.H:** Payment of principal and interest on outstanding bonds.
- **Section 3-38-21:** Eligible uses of tax proceeds as follows:
 - Taxes from first 30 days of rental:
 - Collecting and otherwise administering the tax, including audits.
 - 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.
 - Providing **police and fire protection and sanitation service** for tourist-related facilities, attractions and events located in the respective municipality or county.

What are Other Eligible Uses of Lodgers Tax?

After meeting the requirements for promotional purposes:

- **Section 3-38-21:** Eligible uses of tax proceeds as follows:
 - Taxes from first 30 days of rental:
 - Providing a required **minimum revenue guarantee for air service** to the municipality or county to provide easy access for tourists to visit tourist-related facilities, attractions and events.
 - “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 their locality.
 - Taxes from the 31st and subsequent days of rental:
 - **For any municipality or county purpose.**
 - Provided that the use is stated in the local ordinance imposing the tax.

Can Lodgers Tax be used for Contracting Services?

Section 3-38-21.1

- The governing body of a municipality or county **may contract for the management of programs and activities funded with revenue from the lodgers tax.**
- 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.
- A **person or governmental agency with whom a municipality contracts** under this section to conduct an authorized activity 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.**
- The occupancy tax revenue spent for a purpose authorized by the Lodgers' Tax Act **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.
- 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** and subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

Can Lodgers Tax be Used for Revenue Bonds?

Section 3-38-23

- 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 revenue bonds.
- 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 lodgers tax.
- C. The revenue bonds shall bear interest at a rate or rates and the first interest payment may be for any period authorized in the Public Securities Act.

Who are the Responsible Parties?

Collection of taxes Section 3-38-17

- Every **vendor providing lodging** within the county or municipality that imposes a lodgers' tax is responsible for collecting that tax.
- 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.
- 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.
- **Counties and municipalities** are responsible for ensuring accurate and timely revenue collections from vendors, auditing vendors, expending tax proceeds only as allowed by statute, and reporting to DFA/LGD on a quarterly basis.

Municipalities and counties have two years to expend collected revenues and typically expend carryover funds in each annual budget.

How are Advisory Boards Created?

Section 3-38-22

The mayor of every municipality that imposes an occupancy tax pursuant to the Lodgers' Tax Act shall appoint a five-member advisory board that consists of;

1. Two members who are owners or operators of lodgings subject to the occupancy tax within
2. Two members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists
3. One member who is a resident of the municipality and represents the general public.

What are the Responsibility of Advisory Boards?

Section 3-38-22

- Shall **advise the respective governing bodies on the expenditure of funds** authorized by for advertising, publicizing and promoting tourist attractions and facilities in the respective counties and municipalities.
- Shall **submit to the mayor and council or county commission recommendations** for the expenditures of funds to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events in the respective counties and municipalities.

Who do Municipalities and Counties Report To?

Financial Reporting Section 3-38-17.2

Municipalities or county imposing and collecting an occupancy (lodgers) tax shall;

- **Provide to the advisory board** any portion of any proposed budget, report or audit filed or received by the governing body 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.
- **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.
 - Refer to Lodgers Tax Quarterly Report Rule 2 NMAC 105.2
 - **Currently:** Use the “Lodgers Tax Quarterly Report Form” in Excel format which is found here: <http://www.nmdfa.state.nm.us/bfb-forms.aspx>
 - **Future:** LGD is developing a Lodgers Tax Module within the Local Government Budget Management System (LGBMS)

Who Enforces Lodgers Tax?

Section 3-38 -17.3

- A. An action to enforce the Lodgers' Tax Act [3-38-13 to 3-38-24 NMSA 1978] may be brought by:
 - 1. the attorney general or the district attorney within the jurisdiction of the county.
 - 2. a vendor who is collecting the proceeds of the lodgers tax.
- B. A district court may issue a writ of mandamus or an injunction or other legal reparation to enforce the provisions of the Act.
- C. The court shall award costs and attorney fees to the prevailing party.

When Are Audits Necessary?

Audit of vendors Section 3-38-17.1.

- If the county or municipality collects **more than \$250,000 in lodgers' tax revenue**, the governing body must conduct random audits of vendors to confirm compliance.
- The county or municipality collects **less than \$250,000 in revenue**, the governing body must conduct random audits of vendors to confirm compliance.
- Copies of audits completed shall be filed annually with the local government division of the department of finance and administration.
 - Email to Jolene.Gonzales1@state.nm.us
 - Mail to DFA Local Government Division, Attn: Jolene Gonzales
Bataan Memorial Bldg., Suite 201
407 Galisteo St.
Santa Fe, NM 87501

How are Delinquencies Handled?

Section 3-38-18

- 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;
 - 1. due to failure to collect the tax, a vendee shall be issued a civil penalty in an amount equal to the greater of ten percent of the amount 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;
 - 1. interest on the unpaid principal at a rate of not exceeding one percent a month,
 - 2. reasonable attorneys' fees incurred in connection therewith.

How are Penalties for not Remitting Tax Handled?

Section 3-38-19

The governing body of the municipality or county shall, **by ordinance**, provide for penalties for failure to pay the tax 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.

A misty, serene landscape featuring a calm lake in the foreground, with soft, hazy mountains in the background. The overall color palette is light and airy, with various shades of blue and green. The text 'Questions?' is centered in a bold, dark teal font.

Questions?