

1 SENATE BILL 207

2 56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

3 INTRODUCED BY

4 Peter Wirth

5  
6  
7  
8 Trying to tie STRs to AH.  
\$500M Bill already in play  
to address AH

9  
10 AN ACT

11 RELATING TO PROPERTY; AMENDING PROVISIONS OF THE LODGER TAX  
12 ACT; AUTHORIZING AN OCCUPANCY SURTAX ON CERTAIN SHORT-TERM  
13 RENTALS PURSUANT TO THE LODGERS' TAX ACT; **REQUIRING LOCAL**  
14 **GOVERNMENTS THAT IMPOSE THE OCCUPANCY SURTAX TO USE THE**  
15 **PROCEEDS TO DEFRAY THE COST OF AFFORDABLE HOUSING;** EXCLUDING  
16 CERTAIN SHORT-TERM RENTAL PROPERTY FROM THE DEFINITION OF  
17 "RESIDENTIAL PROPERTY" IN THE PROPERTY TAX CODE; AMENDING FORM  
18 REQUIREMENTS FOR NOTICES OF VALUATION SENT TO PROPERTY OWNERS;  
19 REPEALING A SECTION OF THE PROPERTY TAX CODE THAT REQUIRES  
20 PROPERTY TO BE PRESUMED CLASSIFIED AS NONRESIDENTIAL PROPERTY.

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. Section 3-38-14 NMSA 1978 (being Laws 1969,  
24 Chapter 199, Section 2, as amended) is amended to read:

25 "3-38-14. DEFINITIONS.--As used in the Lodgers' Tax Act:

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SurTax will apply to GROSS rent, rather than the amount the Host/Owner receives - meaning taxed on service fees paid to Airbnb and cleaning fees. This is an INCOME Tax

1           A. "gross taxable rent" means the total amount of  
2           rent paid for lodging, not including the state gross receipts  
3           tax or local sales taxes;

4           B. "lodging" means the transaction of furnishing  
5           rooms or other accommodations by a vendor to a vendee who for  
6           rent uses, possesses or has the right to use or possess the  
7           rooms or other units of accommodations in or at a taxable  
8           premises;

9           C. "lodgings" means the rooms or other  
10          accommodations furnished by a vendor to a vendee by a taxable  
11          service of lodging;

12          D. "occupancy surtax" means the surtax imposed by  
13          Section 3-38-15.1 NMSA 1978;

14          ~~[D]~~ E. "occupancy tax" means the tax on lodging  
15          authorized by ~~[the Lodgers' Tax Act]~~ Section 3-38-15 NMSA 1978;

16          ~~[E.]~~ F. "person" means a corporation, firm, other  
17          body corporate, partnership, association or individual.

18          "Person" includes an executor, administrator, trustee, receiver  
19          or other representative appointed according to law and acting  
20          in a representative capacity. "Person" does not include the  
21          United States of America, the state of New Mexico, any  
22          corporation, department, instrumentality or agency of the  
23          federal government or the state government or any political  
24          subdivision of the state;

25          ~~[F.]~~ G. "rent" means the consideration received by  
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Definition conflicts with definition of "residential property".

1 a vendor in money, credits, property or other consideration  
2 valued in money for lodgings subject to ~~[an occupancy]~~ a tax  
3 authorized in the Lodgers' Tax Act;

4 ~~[G.]~~ H. "taxable premises" means a hotel, motel or  
5 other premises used for lodging that is not the vendee's  
6 household or primary residence;

7 ~~[H.]~~ I. "temporary lodging" means lodgings for the  
8 purpose of housing a vendee within proximity of the vendee's  
9 employment or job location;

10 ~~[I.]~~ J. "tourist" means a person who travels for  
11 the purpose of business, pleasure or culture to a municipality  
12 or county imposing an occupancy tax;

13 ~~[J.]~~ K. "tourist-related events" means events that  
14 are planned for, promoted to and attended by tourists;

15 ~~[K.]~~ L. "tourist-related facilities and  
16 attractions" means facilities and attractions that are intended  
17 to be used by or visited by tourists;

18 ~~[L.]~~ M. "tourist-related transportation systems"  
19 means transportation systems that provide transportation for  
20 tourists to and from tourist-related facilities and attractions  
21 and tourist-related events;

22 ~~[M.]~~ N. "vendee" means a natural person to whom  
23 lodgings are furnished in the exercise of the taxable service  
24 of lodging; and

25 ~~[N.]~~ O. "vendor" means a person or the person's

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1 agent furnishing lodgings in the exercise of the taxable  
2 service of lodging."

Again - this is an INCOME  
tax on the owner, not a sur-  
tax to the guest/tourist

3 SECTION 2. A new Section 3-38-15.1 NMSA 1978 is enacted  
4 to read:

5 "3-38-15.1. [NEW MATERIAL] OCCUPANCY SURTAX.--

6 A. In addition to the occupancy tax, a municipality  
7 or county may impose by ordinance an occupancy surtax for  
8 revenues on single-family rentals. The surtax shall not exceed  
9 two and one-half percent gross taxable rent of single-family  
10 rentals.

11 B. A municipality or county imposing an occupancy  
12 surtax shall use the proceeds from the surtax to defray the  
13 cost of providing affordable housing or to leverage federal  
14 funding for affordable housing.

15 C. As used in this section:

16 (1) "affordable housing" means any housing  
17 that benefits those whose income is at or below eighty percent  
18 of the area median income;

19 (2) "single-family rental" means a single-  
20 family residence offered for rent for a term of less than  
21 thirty days; and

22 (3) "single-family residence" means an  
23 occupied residence, including an apartment, house, guest house,  
24 cottage or condominium, in which at least one room or unit is  
25 rented by a vendor through the use of advance reservations.

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Definition conflicts with definition of "residential property". How can it be a single family residence and commercial at the same time?

1 "Single-family residence" does not include a hotel, motel,  
2 lodging house, bed and breakfast establishment or property  
3 offered as a time share, as that term is used in the New Mexico  
4 Time Share Act."

5 SECTION 3. Section 3-38-16 NMSA 1978 (being Laws 1969,  
6 Chapter 199, Section 4, as amended) is amended to read:

7 "3-38-16. EXEMPTIONS.--The occupancy tax and occupancy  
8 surtax shall not apply:

9 A. if a vendee:

10 (1) has been a permanent resident of the  
11 taxable premises for a period of at least thirty consecutive  
12 days, unless those premises are temporary lodging; or

13 (2) enters into or has entered into a written  
14 agreement for lodgings at the taxable premises for a period of  
15 at least thirty consecutive days, unless those premises are  
16 temporary lodging;

17 B. if the rent paid by a vendee is less than two  
18 dollars (\$2.00) a day;

19 C. to lodging accommodations at institutions of the  
20 federal government, the state or any political subdivision  
21 thereof;

22 D. to lodging accommodations at religious,  
23 charitable, educational or philanthropic institutions,  
24 including accommodations at summer camps operated by such  
25 institutions;

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1 E. to clinics, hospitals or other medical  
2 facilities; or

3 F. to privately owned and operated convalescent  
4 homes or homes for the aged, infirm, indigent or chronically  
5 ill."

6 SECTION 4. Section 3-38-17 NMSA 1978 (being Laws  
7 Chapter 199, Section 5, as amended) is amended to read

8 "3-38-17. COLLECTION OF TAXES.--

9 A. Every vendor providing lodgings in a  
10 municipality or county imposing an occupancy tax or occupancy  
11 surtax shall collect the proceeds thereof on behalf of the  
12 municipality or county and shall act as a trustee therefor.

13 B. The tax and surtax shall be collected from  
14 vendees in accordance with the ordinance imposing the tax and  
15 shall be charged separately from the rent fixed by the vendor  
16 for the lodgings."

17 SECTION 5. Section 3-38-17.1 NMSA 1978 (being Laws 1992,  
18 Chapter 12, Section 2, as amended) is amended to read:

19 "3-38-17.1. AUDIT OF VENDORS.--The governing body of any  
20 municipality or county collecting over two hundred fifty  
21 thousand dollars (\$250,000) in occupancy tax or occupancy  
22 surtax proceeds shall select for annual random audits one or  
23 more vendors to verify the amount of gross taxable rent subject  
24 to the [~~occupancy~~] tax and surtax and to ensure that the full  
25 amount of [~~occupancy~~] tax and surtax on that rent is collected.

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STR owner is responsible  
for collecting and remitting  
the tax

Random audits  
of STR owners  
finances can be  
imposed

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1 The governing body of any municipality or county collecting  
2 less than two hundred fifty thousand dollars (\$250,000) in  
3 receipts, per annum, of [~~occupancy~~] tax and surtax proceeds  
4 shall conduct random audits to verify full payment of occupancy  
5 tax receipts. Copies of audits completed shall be filed  
6 annually with the local government division of the department  
7 of finance and administration."

8 SECTION 6. Section 3-38-17.2 NMSA 1978 (being Laws 1996,  
9 Chapter 58, Section 5) is amended to read:

10 "3-38-17.2. FINANCIAL REPORTING.--

11 A. The governing body of any municipality or county  
12 imposing and collecting an occupancy tax or occupancy surtax  
13 shall furnish to the advisory board created pursuant to Section  
14 3-38-22 NMSA 1978 that portion of any proposed budget, report  
15 or audit filed or received by the governing body pursuant to  
16 either Chapter 6, Article 6 NMSA 1978 or the Audit Act that  
17 relates to the expenditure of [~~occupancy~~] tax and surtax funds  
18 within ten days of the filing or receipt of such proposed  
19 budget, report or audit by the local governing body.

20 B. The governing body of any municipality or county  
21 imposing and collecting an occupancy tax or occupancy surtax  
22 shall report to the local government division of the department  
23 of finance and administration on a quarterly basis any  
24 expenditure of [~~occupancy~~] tax and surtax funds pursuant to  
25 Sections 3-38-15, 3-38-15.1 and 3-38-21 NMSA 1978 and shall

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1 furnish a copy of this report to the advisory board when it is  
2 filed with the division."

3 SECTION 7. Section 3-38-17.3 NMSA 1978 (being Laws 1996,  
4 Chapter 58, Section 6) is amended to read:

5 "3-38-17.3. ENFORCEMENT.--

6 A. An action to enforce the provisions of the  
7 Lodgers' Tax Act may be brought by:

8 (1) the attorney general or the district  
9 attorney in the county of jurisdiction; or

10 (2) a vendor who is collecting the proceeds of  
11 an occupancy tax or occupancy surtax in the county of  
12 jurisdiction.

13 B. A district court may issue a writ of mandamus or  
14 order an injunction or other appropriate remedy to enforce the  
15 provisions of the Lodgers' Tax Act.

16 C. The court shall award costs and reasonable  
17 [~~attorneys'~~] attorney fees to the prevailing party in a court  
18 action to enforce the provisions of the Lodgers' Tax Act."

19 SECTION 8. Section 3-38-18 NMSA 1978 (being Laws 1969,  
20 Chapter 199, Section 6, as amended) is amended to read:

21 "3-38-18. COLLECTION OF DELINQUENCIES.--

22 A. The governing body of ~~[the]~~ a municipality or  
23 county shall, by ordinance, provide that a vendor is liable for  
24 the payment of the proceeds of any occupancy tax or occupancy  
25 surtax that the vendor failed to remit to the municipality or

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1 county, due to ~~his~~ the vendor's failure to collect the tax or  
2 surtax or otherwise, and shall provide for a civil penalty for  
3 any such failure in an amount equal to the greater of ten  
4 percent of the amount that was not duly remitted to the  
5 municipality or county or one hundred dollars (\$100).

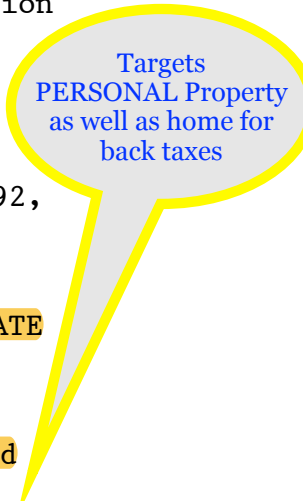
6 B. ~~The~~ A municipality or county may bring an  
7 action in law or equity in the district court for the  
8 collection of any amounts due, including without limitation  
9 penalties thereon, interest on the unpaid principal at a rate  
10 ~~of~~ not exceeding one percent a month, the costs of collection  
11 and reasonable ~~attorneys'~~ attorney fees incurred in  
12 connection therewith."

13 SECTION 9. Section 3-38-18.1 NMSA 1978 (being Laws 1992,  
14 Chapter 12, Section 1) is amended to read:

15 "3-38-18.1. LIEN FOR OCCUPANCY TAX--PAYMENT--CERTIFICATE  
16 OF LIENS.--

17 A. The occupancy tax and occupancy surtax imposed  
18 by a municipality or county ~~constitutes~~ constitute a lien in  
19 favor of that municipality or county upon the personal and real  
20 property of the vendor providing lodgings in that municipality  
21 or county. The lien may be enforced as provided in Sections  
22 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be  
23 determined from the date of filing.

24 B. Under process or order of court, no person shall  
25 sell the property of any vendor without first ascertaining from



Must obtain "clearance" from County PRIOR to selling a property - certifying no outstanding STR taxes. What other property owner or business owner has to do this?

1 the clerk or treasurer of the municipality or county in which  
2 the vendor is located the amount of any occupancy tax or  
3 occupancy surtax due the municipality or county. Any occupancy  
4 tax or occupancy surtax due the municipality or county shall be  
5 paid from the proceeds of the sale before payment is made to  
6 the judgment creditor or any other person with a claim on the  
7 sale proceeds.

8 C. The clerk or treasurer of [~~the~~] a municipality  
9 or county shall furnish to any person applying for such a  
10 certificate a certificate showing the amount of all liens in  
11 the records of the municipality or county against any vendor  
12 pursuant to Chapter 3, Article 38 NMSA 1978."

13 SECTION 10. Section 3-38-19 NMSA 1978 (being Laws 1969,  
14 Chapter 199, Section 7, as amended) is amended to read:

15 "3-38-19. PENALTIES.--The governing body of [~~the~~] a  
16 municipality or county shall, by ordinance, provide for  
17 penalties by creating a misdemeanor and imposing a fine of not  
18 more than five hundred dollars (\$500) or imprisonment for not  
19 more than ninety days or both for a violation by any person of  
20 the provisions of the [~~occupancy tax~~] ordinance imposing an  
21 occupancy tax or occupancy surtax for a failure to pay the tax  
22 or surtax, to remit the proceeds thereof to the municipality or  
23 county or to account properly for any lodging and the tax or  
24 surtax proceeds pertaining thereto."

25 SECTION 11. Section 3-38-20 NMSA 1978 (being Laws 1969,  
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1 Chapter 199, Section 8, as amended) is amended to read:

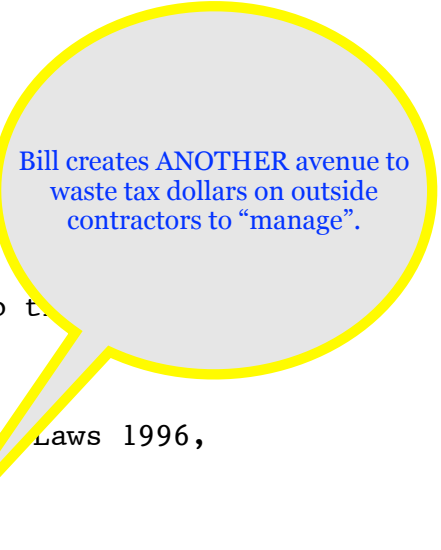
2 "3-38-20. ORDINANCE REQUIREMENTS.--The ordinance imposing  
3 an occupancy tax or occupancy surtax or any ordinance  
4 amendatory thereof or supplemental thereto, except as limited  
5 by or otherwise provided in the Lodgers' Tax Act, shall:

6 A. provide a procedure for licensing each vendor  
7 and for refusing a vendor a license after an opportunity has  
8 been given to the vendor of a public hearing thereon by the  
9 governing body of the municipality or county, as the case may  
10 be;

11 B. state the rate or other amount of the occupancy  
12 tax or occupancy surtax; the times, place and method for the  
13 payment of the [~~occupancy~~] tax or surtax proceeds to the  
14 municipality or county; the accounts and other records to be  
15 maintained in connection with the [~~occupancy~~] tax or surtax; a  
16 procedure for making refunds and resolving disputes relating to  
17 the [~~occupancy~~] tax or surtax, including exemptions pertaining  
18 thereto; the procedure for preservation and destruction of  
19 records and their inspection and investigation; vendor audit  
20 requirements; applicable civil and criminal penalties; and a  
21 procedure of liens, distraint and sales to satisfy such liens;  
22 and

23 C. provide other rights, privileges, powers,  
24 immunities and other details relating to any such vendor  
25 licenses, the collection of the occupancy tax or occupancy

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1 surtax and the remittance of the proceeds thereof to the  
2 municipality or county."

3 SECTION 12. Section 3-38-21.1 NMSA 1978 (being Laws 1996,  
4 Chapter 58, Section 8) is amended to read:

5 "3-38-21.1. CONTRACTING FOR SERVICES.--

6 A. The governing body of a municipality or county  
7 may contract for the management of programs and activities  
8 funded with revenue from the occupancy tax [~~authorized in~~  
9 ~~Section 3-38-15 NMSA 1978~~] or occupancy surtax. The governing  
10 body shall require periodic reports to the governing body, at  
11 least quarterly, listing the expenditures for those periods.  
12 Within ten days of receiving the reports, the governing body  
13 shall furnish copies of them to the advisory board. Funds  
14 provided to the contracting person or governmental agency shall  
15 be maintained in a separate account established for that  
16 purpose and shall not be commingled with any other money.

17 B. A person or governmental agency with whom a  
18 municipality or county contracts under this section to conduct  
19 an activity authorized by [~~Section~~] Sections 3-38-15.1 and  
20 3-38-21 NMSA 1978 shall maintain complete and accurate  
21 financial records of each expenditure of the occupancy tax or  
22 occupancy surtax revenue made and upon request of the governing  
23 body of the municipality or county shall make such records  
24 available for inspection.

25 C. The occupancy tax and occupancy surtax revenue

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SurTax collected wasted on "overhead" and NOT affordable housing

1 spent for a purpose authorized by the Lodgers' Tax Act may be  
2 spent for day-to-day operations, supplies, salaries, office  
3 rental, travel expenses and other administrative costs only if  
4 those administrative costs are incurred directly for that  
5 purpose.

6 D. A person or governmental agency with whom a  
7 local governmental body contracts under this section may  
8 subcontract with the approval of the governing body of the  
9 municipality or county. A subcontractor shall be subject to  
10 the same terms and conditions as the contractor regarding  
11 separate financial accounts, periodic reports and inspection of  
12 records."

13 SECTION 13. Section 7-35-2 NMSA 1978 (being Laws 1973,  
14 Chapter 258, Section 2, as amended) is amended to read:

15 "7-35-2. DEFINITIONS.--As used in the Property Tax Code:

16 A. "abandoned real property" means real property:

17 (1) that is part of a subdivision where the  
18 subdivision has a minimum of five thousand lots in delinquency  
19 on the department's delinquent property tax list as prepared by  
20 the appropriate county treasurer pursuant to Section 7-38-61  
21 NMSA 1978 as of January 1, 2019;

22 (2) of which the subdivided lots are vacant;

23 (3) that is part of a subdivision plotted on  
24 or before 1980;

25 (4) the property taxes, penalties and interest

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1 of which are delinquent for at least ten years; and

2 (5) that does not include property with  
3 existing homes, businesses or other habitable structures;

4 B. "department" or "division" means the taxation  
5 and revenue department, the secretary of taxation and revenue  
6 or any employee of the department exercising authority lawfully  
7 delegated to that employee by the secretary;

8 C. "director" means the secretary;

9 D. "livestock" means cattle, buffalo, horses,  
10 mules, sheep, goats, swine, ratites and other domestic animals  
11 useful to humans;

12 E. "manufactured home" means a manufactured home as  
13 that term is defined in Section 66-1-4.11 NMSA 1978;

14 F. "net taxable value" means the value of property  
15 upon which the tax is imposed and is determined by deducting  
16 from taxable value the amount of any exemption authorized by  
17 the Property Tax Code;

18 G. "nonresidential property" means property that is  
19 not residential property;

20 H. "owner" means the person in whom is vested any  
21 title to property;

22 I. "person" means an individual or any other legal  
23 entity;

24 J. "property" means tangible property, real or  
25 personal;

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Uses the same words to  
define "non-residential".  
That's not a definition



Again - loops in Tax Assessor requirements to address loop holes. Why do this under the guise of a "lodgers SurTax" that is not a tourist tax but another INCOME tax?...in ADDITION to the new Property Class change

1 in terms of dollars per thousand dollars of net taxable value  
2 of property;

3 P. "tax ratio" means the percentage established  
4 under the Property Tax Code that is applied to the value of  
5 property determined for property taxation purposes in order to  
6 derive taxable value; and

7 Q. "tax year" means the calendar year."

8 **SECTION 14. Section 7-38-20 NMSA 1978 (being Laws 1973,**  
9 **Chapter 258, Section 60, as amended) is amended to read:**

10 **"7-38-20. COUNTY ASSESSOR AND DEPARTMENT TO MAIL NOTICES**  
11 **OF VALUATION.--**

12 A. By April 1 of each year, the county assessor  
13 shall mail a notice in a form prescribed by the county assessor  
14 to each property owner informing the property owner of the net  
15 taxable value of the property owner's property that has been  
16 valued for property taxation purposes by the assessor and other  
17 related information as required by Subsection D of this  
18 section.

19 B. By May 1 of each year, the department shall mail  
20 a notice in a form prescribed by the department to each  
21 property owner informing the property owner of the net taxable  
22 value of the property owner's property that has been valued for  
23 property taxation purposes by the department and other related  
24 information as required by Subsection D of this section.

25 C. Failure to receive the notice required by this

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1 section does not invalidate the value set on the property, any  
2 property tax based on that value or any subsequent procedure or  
3 proceeding instituted for the collection of the tax.

4 D. The notice required by this section shall state,  
5 at a minimum:

- 6 (1) the property owner's name and address;
- 7 (2) the description or identification of the  
8 property valued;
- 9 (3) the classification of the property valued;
- 10 (4) the value set on the property for property  
11 taxation purposes;
- 12 (5) the tax ratio;
- 13 (6) the taxable value of the property for the  
14 previous and current tax years;
- 15 (7) the tax rate from the previous tax year;
- 16 (8) the amount of tax from the previous tax  
17 year;
- 18 (9) with respect to residential property,  
19 instructions for calculating an estimated tax for the current  
20 tax year, which shall be prominently displayed on the front of  
21 the notice, and a disclaimer for such instructions similar to  
22 the following:  
23 "The calculation of property tax may be higher or lower  
24 than the property tax that will actually be imposed.";
- 25 (10) the amount of any exemptions allowed and

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1 a statement of the net taxable value of the property after  
2 deducting the exemptions;

3 (11) the allocations of net taxable values to  
4 the governmental units;

5 (12) briefly, the eligibility requirements and  
6 application procedures and deadline for claiming eligibility  
7 for a limitation on increases in the valuation for property  
8 taxation purposes of a single-family dwelling owned and  
9 occupied by a person sixty-five years of age or older; and

10 (13) briefly, the procedures for protesting  
11 the value determined for property taxation purposes,  
12 classification, allocation of values to governmental units or  
13 denial of a claim for an exemption or for the limitation on  
14 increases in valuation for property taxation purposes.

15 E. The county assessor may mail the valuation  
16 notice required pursuant to Subsection A of this section to  
17 taxpayers with:

18 (1) the preceding tax year's property tax  
19 bills if the net taxable value of the property has not changed  
20 since the preceding taxable year. In this early mailing, the  
21 county assessor shall provide clear notice to the taxpayer that  
22 the valuation notice is for the succeeding tax year and that  
23 the deadlines for protest of the value or classification of the  
24 property apply to this mailing date; and

25 (2) a form that may be completed by the

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1 taxpayer and returned to the county assessor to update the  
2 taxpayer's mailing address or the classification of the  
3 taxpayer's property, or to claim an exemption or a limitation  
4 on increases in valuation for property taxation purposes  
5 pursuant to the Property Tax Code."

6 SECTION 15. REPEAL.--Section 7-38-17.1 NMSA 1978 (being  
7 Laws 1981, Chapter 37, Section 68) is repealed.

8 SECTION 16. APPLICABILITY.--The provisions of Section 13  
9 of this act apply to the 2025 and subsequent property tax  
10 years.

11 SECTION 17. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2024.