

1 SENATE BILL 288

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Gerald Ortiz y Pino

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO TAXATION; ENACTING THE SWEETENED BEVERAGE EXCISE  
12 TAX ACT; PROVIDING FOR ADMINISTRATION; MAKING DISTRIBUTIONS;  
13 CREATING A FUND; MAKING APPROPRIATIONS.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "[NEW MATERIAL] DISTRIBUTION--SWEETENED BEVERAGE EXCISE  
19 TAX--COUNTY-SUPPORTED MEDICAID FUND--CHILD OBESITY PREVENTION  
20 FUND.--

21 A. A distribution pursuant to Section 7-1-6.1 NMSA  
22 1978 shall be made to the county-supported medicaid fund in an  
23 amount equal to ninety-five percent of the net receipts,  
24 exclusive of penalties and interest, attributable to the  
25 sweetened beverage excise tax.

.184380.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1           B. A distribution pursuant to Section 7-1-6.1 NMSA  
2 1978 shall be made to the child obesity prevention fund in an  
3 amount equal to five percent of the net receipts, exclusive of  
4 penalties and interest, attributable to the sweetened beverage  
5 excise tax."

6           SECTION 2. A new section of Chapter 7 NMSA 1978 is  
7 enacted to read:

8           "[NEW MATERIAL] SHORT TITLE.--Sections 2 through 7 of this  
9 act may be cited as the "Sweetened Beverage Excise Tax Act"."

10          SECTION 3. A new section of Chapter 7 NMSA 1978 is  
11 enacted to read:

12          "[NEW MATERIAL] DEFINITIONS.--As used in the Sweetened  
13 Beverage Excise Tax Act:

14           A. "bottle" means any closed or sealed glass,  
15 metal, paper or plastic container or any other type of  
16 container regardless of the container's composition or size or  
17 the material or combination of materials used to make the  
18 container;

19           B. "bottled sweetened beverage" means any ready-to-  
20 consume sweetened beverage contained in a bottle;

21           C. "caloric sweetener" means a substance that adds  
22 calories to and sweetens the flavor of a beverage;

23           D. "consumer" means a person who purchases a  
24 sweetened beverage for consumption and not for resale;

25           E. "department" means the taxation and revenue

.184380.1

underscoring material = new  
~~[bracketed material] = delete~~

1 department, the secretary or any employee of the department  
2 exercising authority lawfully delegated to that employee by the  
3 secretary;

4 F. "distributor" means a person, including a  
5 manufacturer or a wholesaler, who receives, stores,  
6 manufactures, bottles, distributes or sells bottled sweetened  
7 beverages, simple syrup, syrup or powder or base products for  
8 mixing, compounding or making sweetened beverages, for sale to  
9 retailers doing business in New Mexico, whether or not that  
10 person also sells such products to consumers, or for sale to  
11 consumers;

12 G. "natural fruit juice" means the original liquid  
13 resulting from the pressing of fruit, the liquid resulting from  
14 the reconstitution of fruit juice concentrate or the liquid  
15 resulting from the restoration of water to dehydrated fruit  
16 juice;

17 H. "natural vegetable juice" means the original  
18 liquid resulting from the pressing of one or more vegetables,  
19 the liquid resulting from the reconstitution of vegetable juice  
20 concentrate or the liquid resulting from the restoration of  
21 water to dehydrated vegetable juice;

22 I. "nonalcoholic beverage" means a beverage that  
23 contains less than one-half percent alcohol per volume;

24 J. "powder or base product" means a solid mixture  
25 of basic ingredients, including sugar, used in making, mixing

.184380.1

1 or compounding sweetened beverages by mixing the powder or  
2 other base product with water, ice, syrup, simple syrup,  
3 fruits, vegetables, fruit juice, vegetable juice or any other  
4 product suitable to make a sweetened beverage;

5 K. "resale" means to sell again after purchase or  
6 acquisition;

7 L. "retailer" means a person, other than a  
8 distributor, manufacturer or wholesaler, who receives, stores,  
9 mixes, compounds or manufactures a sweetened beverage and sells  
10 or otherwise dispenses the sweetened beverage to the ultimate  
11 consumer;

12 M. "sale" means the transfer of title or possession  
13 of tangible personal property for a valuable consideration  
14 regardless of the manner in which the transfer is accomplished;

15 N. "secretary" means the secretary of taxation and  
16 revenue or the secretary's delegate;

17 O. "simple syrup" means a mixture of sugar and  
18 water;

19 P. "sugar" includes sucrose, dextrose, fructose,  
20 corn syrup, high-fructose corn syrup, honey or other caloric  
21 sweeteners, except those derived from fruit juice;

22 Q. "sweetened beverage" means a nonalcoholic  
23 beverage, whether carbonated or noncarbonated, sold for human  
24 consumption, that contains five grams or more of added sugar or  
25 other caloric sweetener per twelve ounces; "sweetened beverage"

.184380.1

underscored material = new  
[bracketed material] = delete

1 includes soda, water, sports drinks, energy drinks, colas and  
2 flavored drinks; diluted fruit or vegetable drinks containing  
3 seventy percent or less natural fruit juice or natural  
4 vegetable juice; frozen, freeze-dried or other concentrates to  
5 which water is added to produce a nonalcoholic beverage  
6 containing less than seventy percent natural fruit juice or  
7 natural vegetable juice; a powder or base product; and coffee  
8 or tea bottled as a liquid for sale; and

9 R. "syrup" means the liquid mixture of basic  
10 ingredients used in making, mixing or compounding sweetened  
11 beverages by combining the syrup with water, simple syrup, ice,  
12 fruits, vegetables, fruit juice, vegetable juice or any other  
13 product suitable to make a sweetened beverage."

14 SECTION 4. A new section of Chapter 7 NMSA 1978 is  
15 enacted to read:

16 "[NEW MATERIAL] SWEETENED BEVERAGE EXCISE TAX IMPOSED.--

17 A. For the privilege of selling sweetened beverages  
18 in New Mexico, there is imposed an excise tax on distributors  
19 of sweetened beverages. The rate of the tax shall be one-half  
20 cent (\$.005) per ounce of sweetened beverage sold, whether it  
21 is sold as a bottled sweetened beverage or as a sweetened  
22 beverage that is produced from simple syrup, syrup or powder or  
23 base product. For purposes of calculating the tax, the volume  
24 of sweetened beverage produced from simple syrup, syrup or  
25 powder or base product shall be the largest of:

.184380.1

underscored material = new  
[bracketed material] = delete

1 (1) the largest volume resulting from use of  
2 the simple syrup, syrup or powder or base product according to  
3 any manufacturer's instructions;

4 (2) the volume actually produced by the  
5 retailer; or

6 (3) the volume typically produced by retailers  
7 doing business in New Mexico as reasonably determined by the  
8 secretary.

9 B. The tax imposed by this section may be referred  
10 to as the "sweetened beverage excise tax".

11 C. The sweetened beverage excise tax is imposed in  
12 addition to all other taxes imposed on sweetened beverages.

13 D. The tax imposed by this section shall be  
14 administered pursuant to the Tax Administration Act."

15 SECTION 5. A new section of Chapter 7 NMSA 1978 is  
16 enacted to read:

17 "[NEW MATERIAL] EXEMPTIONS.--The following may be exempted  
18 from the sweetened beverages subject to the sweetened beverage  
19 excise tax:

20 A. bottled sweetened beverages sold to the United  
21 States government and vendors located on the land of a  
22 federally recognized Indian nation, tribe or pueblo located  
23 wholly or partially in New Mexico;

24 B. bottled sweetened beverages sold by a  
25 distributor or a retailer for resale outside New Mexico; and

.184380.1

underscored material = new  
[bracketed material] = delete

1           C. bottled sweetened beverages sold by a  
2 distributor to:

3                   (1) another distributor that is registered  
4 with the department as a distributor of sweetened beverages,  
5 simple syrups, syrups and powder or base products if the sales  
6 invoice clearly indicates that the sale is exempt; and

7                   (2) a person who is both a distributor and a  
8 retailer; provided that the tax shall be included in the  
9 invoice when the purchaser resells the product to a retailer or  
10 a consumer."

11           SECTION 6. A new section of Chapter 7 NMSA 1978 is  
12 enacted to read:

13                   "[NEW MATERIAL] TAX ADMINISTRATION--TAX RETURNS--  
14 REQUIREMENTS.--

15                   A. Distributors shall file sweetened beverage  
16 excise tax returns on or before the twenty-fifth day of the  
17 month following the month in which sweetened beverages are sold  
18 in New Mexico. The form and content of the return shall be as  
19 prescribed by the secretary. The returns shall be filed  
20 electronically.

21                   B. Each person engaged in the business of selling  
22 sweetened beverages in New Mexico as a distributor shall  
23 register pursuant to Section 7-1-12 NMSA 1978."

24           SECTION 7. A new section of Chapter 7 NMSA 1978 is  
25 enacted to read:

.184380.1

1           "[NEW MATERIAL] TAX ADMINISTRATION--BOND.--

2           A. Every sweetened beverage excise tax taxpayer  
3 shall file with the department a bond on a form approved by the  
4 attorney general with a surety company authorized by the public  
5 regulation commission to transact business in this state as a  
6 surety and upon which bond the taxpayer is the principal  
7 obligor and the state the obligee. The bond shall be  
8 conditioned upon the prompt filing of true reports and the  
9 payment by the taxpayer to the department of all taxes levied  
10 by the Sweetened Beverage Excise Tax Act, together with all  
11 applicable penalties and interest thereon.

12           B. In lieu of the bond, the taxpayer may elect to  
13 file with the department cash or bonds of the United States or  
14 New Mexico or of any political subdivision of the state.

15           C. The total amount of the bond, cash or securities  
16 required of any taxpayer shall be fixed by the department and  
17 may be increased or reduced by the department at any time,  
18 subject to the limitations provided in this section.

19           D. In fixing the total amount of the bond, cash or  
20 securities required of any taxpayer required to post bond, the  
21 department shall require an amount equivalent to at least two  
22 times the amount of the department's estimate of the taxpayer's  
23 monthly sweetened beverage excise tax, determined in such  
24 manner as the secretary may deem proper; provided, however,  
25 that the total amount of bond, cash or securities required of a

.184380.1



underscoring material = new  
~~[bracketed material] = delete~~

1 taxpayer shall never be less than one thousand dollars  
2 (\$1,000).

3 E. In the event that the department decides that  
4 the amount of the existing bond, cash or securities is  
5 insufficient to ensure payment to this state of the amount of  
6 the sweetened beverage excise tax and any penalties and  
7 interest for which the taxpayer is or may at any time become  
8 liable, the taxpayer, upon written demand of the department  
9 mailed to the last known address of the taxpayer as shown on  
10 the records of the department, shall file an additional bond,  
11 cash or securities in the manner, form and amount determined by  
12 the department to be necessary to secure at all times the  
13 payment by the taxpayer of all taxes, penalties and interest  
14 due under the Sweetened Beverage Excise Tax Act.

15 F. A surety on a bond furnished by a taxpayer as  
16 required by this section shall be released and discharged from  
17 all liability accruing on the bond after the expiration of  
18 ninety days from the date upon which the surety files with the  
19 department a written request to be released and discharged;  
20 provided, however, that such request shall not operate to  
21 release or discharge the surety from any liability already  
22 accrued or that shall accrue before the expiration of the  
23 ninety-day period, unless a new bond is filed during the  
24 ninety-day period, in which case, the previous bond may be  
25 canceled as of the effective date of the new bond. On receipt

.184380.1

underscoring material = new  
~~[bracketed material] = delete~~

1 of notice of such request, the department promptly shall notify  
2 the taxpayer who furnished the bond that the taxpayer, on or  
3 before the expiration of the ninety-day period, shall file with  
4 the department a new bond with a surety satisfactory to the  
5 department in the amount and form required in this section.

6 G. A taxpayer who is required to file bond with or  
7 provide cash or securities to the department in accordance with  
8 this section and who is required by another state law to file  
9 another bond with or provide cash or securities to the  
10 department may elect to file a combined bond or to provide cash  
11 or securities applicable to the provisions of both this section  
12 and the other law, with the approval of the secretary. The  
13 amount of the combined bond, cash or securities shall be  
14 determined by the department, and the form of the combined bond  
15 shall be approved by the attorney general."

16 SECTION 8. Section 27-10-3 NMSA 1978 (being Laws 1991,  
17 Chapter 212, Section 3, as amended) is amended to read:

18 "27-10-3. COUNTY-SUPPORTED MEDICAID FUND CREATED--USE--  
19 APPROPRIATION BY THE LEGISLATURE.--

20 A. There is created in the state treasury the  
21 "county-supported medicaid fund". The fund shall be invested  
22 by the state treasurer as other state funds are invested.  
23 Income earned from investment of the fund shall be credited to  
24 the county-supported medicaid fund. The fund shall not revert  
25 in any fiscal year.

.184380.1

underscoring material = new  
[bracketed material] = delete

1           B. Money in the county-supported medicaid fund,  
2 except for money from the sweetened beverage excise tax, is  
3 subject to appropriation by the legislature to support the  
4 state medicaid program and to institute or support primary care  
5 health care services pursuant to Subsections D and E of Section  
6 24-1A-3.1 NMSA 1978. Of the amount appropriated each year,  
7 nine percent shall be appropriated to the department of health  
8 to institute or support primary care health care services  
9 pursuant to Subsections D and E of Section 24-1A-3.1 NMSA 1978.

10           C. Up to three percent of the county-supported  
11 medicaid fund each year may be expended for administrative  
12 costs related to medicaid or for developing new primary care  
13 health care centers or facilities.

14           D. Money in the fund from the sweetened beverage  
15 excise tax shall be expended for medicaid services.

16           ~~[D-]~~ E. In the event federal funds for medicaid are  
17 not received by New Mexico for any eighteen-month period, the  
18 unencumbered balance remaining in the county-supported medicaid  
19 fund and the sole community provider fund at the end of the  
20 fiscal year following the end of any eighteen-month period  
21 shall be paid within a reasonable time to each county for  
22 deposit in the county indigent hospital claims fund in  
23 proportion to the payments made by each county through tax  
24 revenues or transfers in the previous fiscal year as certified  
25 by the local government division of the department of finance

.184380.1

underscoring material = new  
~~[bracketed material] = delete~~

1 and administration. The department will provide for budgeting  
2 and accounting of payments to the fund."

3 SECTION 9. A new section of Chapter 27, Article 10 NMSA  
4 1978 is enacted to read:

5 "[NEW MATERIAL] CHILD OBESITY PREVENTION FUND--  
6 ADMINISTRATION.--

7 A. The "child obesity prevention fund" is created  
8 in the state treasury. The fund shall be invested by the state  
9 treasurer as other state funds are invested. Income earned  
10 from investment of the fund shall be credited to the child  
11 obesity prevention fund. The fund shall not revert in any  
12 fiscal year.

13 B. Five percent of the money from the sweetened  
14 beverage excise tax shall be distributed pursuant to the Tax  
15 Administration Act to the child obesity prevention fund.

16 C. Money in the child obesity prevention fund is  
17 appropriated to the department of health to support child  
18 obesity prevention.

19 D. The child obesity prevention fund shall be  
20 administered by the department of health.

21 E. Money in the fund shall be expended by warrant  
22 issued by the secretary of finance and administration pursuant  
23 to vouchers signed by the secretary of health."

24 SECTION 10. APPLICABILITY.--The distributions pursuant to  
25 Section 1 of this act apply to receipts from the sweetened

.184380.1

underscoring material = new  
~~[bracketed material] = delete~~

1 beverage excise tax attributable to sales on or after January  
2 1, 2012.

3 SECTION 11. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is January 1, 2012.