

HOUSE BILL 213

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

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; AMENDING THE LIQUOR EXCISE TAX ACT;
IMPOSING THE TAX ON RETAILERS; PROVIDING AN EXEMPTION; CHANGING
THE RATES OF THE TAX TO A PERCENTAGE BASIS; AMENDING
DEFINITIONS IN THE LIQUOR EXCISE TAX ACT; ELIMINATING FORTIFIED
WINE AS A SPECIFIC TYPE OF ALCOHOLIC BEVERAGE; CHANGING THE
DISTRIBUTIONS OF THE TAX; EXCLUDING THE LIQUOR EXCISE TAX FROM
THE DEFINITION OF "GROSS RECEIPTS" IN THE GROSS RECEIPTS AND
COMPENSATING TAX ACT; REPEALING THE LOCAL DWI GRANT PROGRAM ACT
AND SECTIONS OF THE LIQUOR EXCISE TAX ACT.

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

SECTION 1. Section 7-1-6.40 NMSA 1978 (being Laws 1997,
Chapter 182, Section 1, as amended) is amended to read:

"7-1-6.40. DISTRIBUTION OF LIQUOR EXCISE TAX--~~[LOCAL DWI
GRANT FUND--CERTAIN MUNICIPALITIES]~~ DRUG COURT FUND--ALCOHOL

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1 AND SUBSTANCE USE HARMS ALLEVIATION FUND.--

2 ~~[A. A distribution pursuant to Section 7-1-6.1 NMSA~~
3 ~~1978 in an amount equal to forty-five percent of the net~~
4 ~~receipts attributable to the liquor excise tax shall be made to~~
5 ~~the local DWI grant fund.~~

6 ~~B. A distribution pursuant to Section 7-1-6.1 NMSA~~
7 ~~1978 of twenty thousand seven hundred fifty dollars (\$20,750)~~
8 ~~monthly from the net receipts attributable to the liquor excise~~
9 ~~tax shall be made to a municipality that is located in a class~~
10 ~~A county and that has a population according to the most recent~~
11 ~~federal decennial census of more than thirty thousand but less~~
12 ~~than sixty thousand and shall be used by the municipality only~~
13 ~~for the provision of alcohol treatment and rehabilitation~~
14 ~~services for street inebriates.]~~

15 A. A distribution pursuant to Section 7-1-6.1 NMSA
16 1978 shall be made to the alcohol and substance use harms
17 alleviation fund in an amount equal to the net receipts
18 attributable to the liquor excise tax, less two million eighty-
19 four thousand dollars (\$2,084,000) monthly and the amount
20 distributed pursuant to Subsection B of this section.

21 ~~[C. Beginning July 1, 2019]~~ B. A distribution
22 pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to
23 [five percent of] two hundred fifty thousand dollars (\$250,000)
24 monthly from the net receipts attributable to the liquor excise
25 tax shall be made to the drug court fund."

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1 SECTION 2. Section 7-9-3.5 NMSA 1978 (being Laws 2003,
2 Chapter 272, Section 3, as amended) is amended to read:

3 "7-9-3.5. DEFINITION--GROSS RECEIPTS.--

4 A. As used in the Gross Receipts and Compensating
5 Tax Act:

6 (1) "gross receipts" means the total amount of
7 money or the value of other consideration received from selling
8 property in New Mexico, from leasing or licensing property
9 employed in New Mexico, from granting a right to use a
10 franchise employed in New Mexico, from selling services
11 performed outside New Mexico, the product of which is initially
12 used in New Mexico, or from performing services in New Mexico.
13 In an exchange in which the money or other consideration
14 received does not represent the value of the property or
15 service exchanged, "gross receipts" means the reasonable value
16 of the property or service exchanged;

17 (2) "gross receipts" includes:

18 (a) any receipts from sales of tangible
19 personal property handled on consignment;

20 (b) the total commissions or fees
21 derived from the business of buying, selling or promoting the
22 purchase, sale or lease, as an agent or broker on a commission
23 or fee basis, of any property, service, stock, bond or
24 security;

25 (c) amounts paid by members of any

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1 cooperative association or similar organization for sales or
2 leases of personal property or performance of services by such
3 organization;

4 (d) amounts received from transmitting
5 messages or conversations by persons providing telephone or
6 telegraph services;

7 (e) amounts received by a New Mexico
8 florist from the sale of flowers, plants or other products that
9 are customarily sold by florists where the sale is made
10 pursuant to orders placed with the New Mexico florist that are
11 filled and delivered outside New Mexico by an out-of-state
12 florist;

13 (f) the receipts of a home service
14 provider from providing mobile telecommunications services to
15 customers whose place of primary use is in New Mexico if: 1)
16 the mobile telecommunications services originate and terminate
17 in the same state, regardless of where the services originate,
18 terminate or pass through; and 2) the charges for mobile
19 telecommunications services are billed by or for a customer's
20 home service provider and are deemed provided by the home
21 service provider. For the purposes of this section, "home
22 service provider", "mobile telecommunications services",
23 "customer" and "place of primary use" have the meanings given
24 in the federal Mobile Telecommunications Sourcing Act; and

25 (g) receipts collected by a marketplace

1 provider engaging in business in the state from sales, leases
2 and licenses of tangible personal property, sales of licenses
3 and sales of services or licenses for use of real property that
4 are sourced to this state and are facilitated by the
5 marketplace provider on behalf of marketplace sellers,
6 regardless of whether the marketplace sellers are engaging in
7 business in the state; and

8 (3) "gross receipts" excludes:

9 (a) cash discounts allowed and taken;
10 (b) New Mexico gross receipts tax,
11 governmental gross receipts tax, leased vehicle gross receipts
12 tax, ~~and~~ cannabis excise tax and liquor excise tax payable on
13 transactions for the reporting period;

14 (c) taxes imposed pursuant to the
15 provisions of any local option gross receipts tax that is
16 payable on transactions for the reporting period;

17 (d) any gross receipts or sales taxes
18 imposed by an Indian nation, tribe or pueblo; provided that the
19 tax is approved, if approval is required by federal law or
20 regulation, by the secretary of the interior of the United
21 States; and provided further that the gross receipts or sales
22 tax imposed by the Indian nation, tribe or pueblo provides a
23 reciprocal exclusion for gross receipts, sales or gross
24 receipts-based excise taxes imposed by the state or its
25 political subdivisions;

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1 (e) any type of time-price differential;
2 (f) amounts received solely on behalf of
3 another in a disclosed agency capacity; and

4 (g) amounts received by a New Mexico
5 florist from the sale of flowers, plants or other products that
6 are customarily sold by florists where the sale is made
7 pursuant to orders placed with an out-of-state florist for
8 filling and delivery in New Mexico by a New Mexico florist.

9 B. When the sale of property or service is made
10 under any type of charge, conditional or time-sales contract or
11 the leasing of property is made under a leasing contract, the
12 seller or lessor may elect to treat all receipts, excluding any
13 type of time-price differential, under such contracts as gross
14 receipts as and when the payments are actually received. If
15 the seller or lessor transfers the seller's or lessor's
16 interest in any such contract to a third person, the seller or
17 lessor shall pay the gross receipts tax upon the full sale or
18 leasing contract amount, excluding any type of time-price
19 differential."

20 SECTION 3. Section 7-17-2 NMSA 1978 (being Laws 1966,
21 Chapter 49, Section 2, as amended) is amended to read:

22 "7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax
23 Act:

24 A. "alcoholic beverages" means distilled or
25 rectified spirits, potable alcohol, brandy, whiskey, rum, gin,
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1 aromatic bitters or any similar beverage, including blended or
2 fermented beverages, dilutions or mixtures of one or more of
3 the foregoing containing more than one-half of one percent
4 alcohol by volume, but "alcoholic beverages" does not include
5 medicinal bitters;

6 B. "barrel" means the equivalent of thirty-one
7 gallons;

8 ~~[B.]~~ C. "beer" means an alcoholic beverage obtained
9 by the fermentation of any infusion or decoction of barley,
10 malt and hops or other cereals in water and includes porter,
11 beer, ale and stout;

12 ~~[C.]~~ D. "cider" means an alcoholic beverage made
13 from the normal alcoholic fermentation of the juice of sound,
14 ripe apples or pears that contains not less than one-half of
15 one percent of alcohol by volume and not more than eight and
16 one-half percent of alcohol by volume;

17 ~~[D.]~~ E. "department" means the taxation and revenue
18 department, the secretary of taxation and revenue or any
19 employee of the department exercising authority lawfully
20 delegated to that employee by the secretary;

21 ~~[E. "fortified wine" means wine containing more~~
22 ~~than fourteen percent alcohol by volume when bottled or~~
23 ~~packaged by the manufacturer, but "fortified wine" does not~~
24 ~~include:~~

25 ~~(1) wine that is sealed or capped by cork~~

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1 ~~closure and aged two years or more;~~

2 ~~(2) wine that contains more than fourteen~~
3 ~~percent alcohol by volume solely as a result of the natural~~
4 ~~fermentation process and that has not been produced with the~~
5 ~~addition of wine spirits, brandy or alcohol; or~~

6 ~~(3) vermouth and sherry;]~~

7 F. "microbrewer" means a person who produces less
8 than two hundred thousand barrels of beer per year;

9 G. "person" includes, to the extent permitted by
10 law, a federal, state or other governmental unit or subdivision
11 or an agency, department, institution or instrumentality
12 thereof;

13 H. "retailer" means a person having a place of
14 business in New Mexico who sells, offers for sale or possesses
15 for the purpose of selling alcoholic beverages in New Mexico;

16 [~~H.~~] I. "small winegrower" means a winegrower who
17 produces less than one million five hundred thousand liters of
18 wine in a year;

19 [~~H.~~] J. "spirituous liquors" means alcoholic
20 beverages, except fermented beverages such as wine, beer, cider
21 and ale;

22 [~~J.~~ "wholesaler" means a person holding a license
23 issued under Section 60-6A-1 NMSA 1978 or a person selling
24 alcoholic beverages that were not purchased from a person
25 holding a license issued under Section 60-6A-1 NMSA 1978;]

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1 K. "wine" means an alcoholic beverage other than
2 cider that is obtained by the fermentation of the natural sugar
3 contained in fruit or other agricultural products, with or
4 without the addition of sugar or other products, and that does
5 not contain more than twenty-one percent alcohol by volume; and

6 L. "winegrower" means a person licensed pursuant to
7 Section 60-6A-11 NMSA 1978."

8 SECTION 4. Section 7-17-5 NMSA 1978 (being Laws 1993,
9 Chapter 65, Section 8, as amended) is amended to read:

10 "7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX--
11 EXEMPTION--

12 A. There is imposed on a [~~wholesaler~~] retailer who
13 sells alcoholic beverages on which the tax imposed by this
14 section has not been paid an excise tax, to be referred to as
15 the "liquor excise tax", at the following rates [~~on~~] of the
16 price paid for alcoholic beverages sold by the retailer:

17 ~~[(1) on spirituous liquors, except as provided~~
18 ~~in Paragraph (9) of this subsection, one dollar sixty cents~~
19 ~~(\$1.60) per liter;~~

20 ~~(2) on beer, except as provided in~~
21 ~~Paragraph (5) of this subsection, forty-one cents (\$.41) per~~
22 ~~gallon;~~

23 ~~(3) on wine, except as provided in Paragraphs~~
24 ~~(4) and (6) of this subsection, forty-five cents (\$.45) per~~
25 ~~liter;~~

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1 ~~(4) on fortified wine, one dollar fifty cents~~
2 ~~(\$1.50) per liter;~~

3 ~~(5) on beer manufactured or produced by a~~
4 ~~microbrewer and sold in this state, provided that proof is~~
5 ~~furnished to the department that the beer was manufactured or~~
6 ~~produced by a microbrewer, eight cents (\$.08) per gallon on the~~
7 ~~first thirty thousand barrels sold, twenty-eight cents (\$.28)~~
8 ~~per gallon for all barrels sold over thirty thousand barrels~~
9 ~~but less than sixty thousand barrels and forty-one cents (\$.41)~~
10 ~~per gallon for sixty thousand or more barrels sold;~~

11 ~~(6) on wine manufactured or produced by a~~
12 ~~small winegrower and sold in this state, provided that proof is~~
13 ~~furnished to the department that the wine was manufactured or~~
14 ~~produced by a small winegrower:~~

15 ~~(a) ten cents (\$.10) per liter on the~~
16 ~~first eighty thousand liters sold;~~

17 ~~(b) twenty cents (\$.20) per liter on~~
18 ~~each liter sold over eighty thousand liters but not over nine~~
19 ~~hundred fifty thousand liters; and~~

20 ~~(c) thirty cents (\$.30) per liter on~~
21 ~~each liter sold over nine hundred fifty thousand liters but not~~
22 ~~over one million five hundred thousand liters;~~

23 ~~(7) on cider, except as provided in Paragraph~~
24 ~~(8) of this subsection, forty-one cents (\$.41) per gallon;~~

25 ~~(8) on cider manufactured or produced by a~~

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1 ~~small winegrower and sold in this state, provided that proof is~~
2 ~~furnished to the department that the cider was manufactured or~~
3 ~~produced by a small winegrower, eight cents (\$.08) per gallon~~
4 ~~on the first thirty thousand barrels sold, twenty-eight cents~~
5 ~~(\$.28) per gallon for all barrels sold over thirty thousand~~
6 ~~barrels but less than sixty thousand barrels and forty-one~~
7 ~~cents (\$.41) per gallon for sixty thousand or more barrels~~
8 ~~sold; and~~

9 ~~(9) on spirituous liquors manufactured or~~
10 ~~produced by a craft distiller licensed pursuant to Section~~
11 ~~60-6A-6.1 NMSA 1978, provided that proof is provided to the~~
12 ~~department that the spirituous liquors were manufactured or~~
13 ~~produced by a craft distiller, for products up to ten percent~~
14 ~~alcohol by volume, eight cents (\$.08) per liter for the first~~
15 ~~two hundred fifty thousand liters sold and twenty-eight cents~~
16 ~~(\$.28) per liter for the next two hundred fifty thousand liters~~
17 ~~sold and for products over ten percent alcohol by volume,~~
18 ~~thirty-two cents (\$.32) per liter on the first one hundred~~
19 ~~seventy-five thousand liters sold and sixty-five cents (\$.65)~~
20 ~~per liter on the next two hundred thousand liters sold.~~

21 ~~B. The volume of wine transferred from one~~
22 ~~winegrower to another winegrower for processing, bottling or~~
23 ~~storage and subsequent return to the transferor shall be~~
24 ~~excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable~~
25 ~~volume of wine of the transferee. Wine transferred from an~~

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1 ~~initial winegrower to a second winegrower remains a tax~~
2 ~~liability of the transferor, provided that if the wine is~~
3 ~~transferred to the transferee for the transferee's use or for~~
4 ~~resale, the transferee then assumes the liability for the tax~~
5 ~~due pursuant to this section.~~

6 C. ~~A transfer of wine from a winegrower to a~~
7 ~~wholesaler for distribution of the wine transfers the liability~~
8 ~~for payment of the liquor excise tax to the wholesaler upon the~~
9 ~~sale of the wine by the wholesaler.]~~

10 (1) on each serving of spirituous liquors,
11 four percent;

12 (2) on each serving of wine, three percent;
13 and

14 (3) on each serving of beer or cider, two
15 percent.

16 B. The liquor excise tax shall not be imposed on
17 alcoholic beverages sold by a retailer if:

18 (1) the retailer is a microbrewer, a small
19 winegrower or a craft distiller licensed pursuant to Section
20 60-6A-6.1 NMSA 1978;

21 (2) the alcoholic beverage is manufactured or
22 produced by the retailer; and

23 (3) the alcoholic beverage is sold on the
24 retailer's premises."

25 SECTION 5. [NEW MATERIAL] ALCOHOL AND SUBSTANCE USE HARMS

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1 ALLEVIATION FUND.--

2 A. The "alcohol and substance use harms alleviation
3 fund" is created as a nonreverting fund in the state treasury.
4 The fund consists of appropriations, distributions, gifts,
5 grants, donations and bequests made to the fund and income from
6 investment of the fund. The department of finance and
7 administration shall administer the fund, and money in the fund
8 is subject to appropriation by the legislature for alcohol and
9 substance use harms prevention, treatment and recovery services
10 to individuals throughout New Mexico, including on lands of
11 Indian nations, tribes and pueblos.

12 B. Money in the fund shall be expended by warrant
13 of the secretary of finance and administration pursuant to
14 vouchers signed by the secretary or the secretary's authorized
15 representative.

16 SECTION 6. TEMPORARY PROVISION--TRANSFER OF FUNDS.--Any
17 unexpended and unencumbered balance in the local DWI grant fund
18 shall be transferred to the alcohol and substance use harms
19 alleviation fund.

20 SECTION 7. REPEAL.--Sections 7-17-6, 7-17-9, 7-17-11 and
21 11-6A-1 through 11-6A-6 NMSA 1978 (being Laws 1984, Chapter 85,
22 Section 4, Laws 1966, Chapter 49, Section 7, Laws 1969, Chapter
23 80, Section 1, Laws 1993, Chapter 65, Sections 1 through 5 and
24 Laws 1997, Chapter 182, Section 2, as amended) are repealed.

25 SECTION 8. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2025.

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