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SENATE BILL 243

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

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

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

Section 1. A new section of the Tax Administration Act is
enacted to read:

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

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

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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

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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

1 or compounding soft drinks by mixing the powder or other base
2 product with water, ice, syrup, simple syrup, fruits,
3 vegetables, fruit juice, vegetable juice or any other product
4 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"

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1 includes soda, water, sports drinks, energy drinks, colas and
2 flavored drinks; diluted fruit or vegetable drinks containing
3 seventy percent or less of 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] 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 (\$0.005) per ounce of sweetened beverage sold, whether it
21 is sold as bottled sweetened beverage or sweetened beverage
22 produced from simple syrup, syrup or powder or base product.
23 For purposes of calculating the tax, the volume of sweetened
24 beverage produced from simple syrup, syrup or powder or base
25 product shall be the largest of:

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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

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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 and the tax shall be included in the invoice when the
9 purchaser resells the product to a retailer or a consumer."

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

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

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

19 B. Returns shall be filed electronically.

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

23 Section 7. A new section of Chapter 7 NMSA 1978 is
24 enacted to read:

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

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

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

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

18 D. In fixing the total amount of the bond, cash or
19 securities required of any taxpayer required to post bond, the
20 department shall require an equivalent in total amount to at
21 least two times the amount of the department's estimate of the
22 taxpayer's monthly sweetened beverage excise tax, determined in
23 such manner as the secretary may deem proper; provided,
24 however, that the total amount of bond, cash or securities
25 required of a taxpayer shall never be less than one thousand

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1 dollars (\$1,000).

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

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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 required to file bond with or provide
7 cash or securities to the department in accordance with this
8 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 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.

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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

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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

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1 beverage excise tax attributable to sales on or after January
2 1, 2011.

3 Section 11. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is January 1, 2011.

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