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FISCAL IMPACT REPORT

SPONSOR Ortiz y Pino **ORIGINAL DATE** 1/20/09
LAST UPDATED _____ **HB** _____
SHORT TITLE No Soft Drink Gross Receipts Deduction **SB** 69
ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	5,897.4	6,044.8	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 69 amends Section 7-9-92 NMSA 1978 to remove “soft drinks” from the list of foods eligible to receive a gross receipts tax deduction for retail food that was enacted in 2004. Soft drinks are defined as nonalcoholic flavored beverages commonly referred to as soft drinks that contain a sweetener additive or are made from powder, syrup, concentrate or any other base product.

The effective date of this provision will be July 1, 2009.

FISCAL IMPLICATIONS

An analysis of the same proposal provided by TRD in 2008 reported that the Beverage Marketing Corporation cites that in 2005, the average American consumed 54.3 gallons of beverages commonly referred to as soft drinks per year (carbonated beverages, not including fruit beverages or sport drinks). With a 2005 population of 1.8 million, this assumes that New Mexicans consumed about 97.8 million gallons of soft drinks per year in 2005. TRD assumes that soft drink consumption per person has remained flat but that New Mexico’s population

grows about 2.5 percent per year. Growing that figure for population growth yields an estimated 111 million gallons consumed in FY10. About 77 percent (85.1 million gallons) of soft drink products are packaged and likely to be sold in retail food stores, but only about half of those 85.1 million gallons (42.6 million gallons) are sold in stores that qualify for the gross receipts tax deduction created in Section 7-9-92 NMSA 1978. Assuming each gallon of soft drink costs \$2, the bill excludes about \$85.1 million of receipts from the food tax deduction. Taxed at a statewide rate of 6.9 percent, the bill would increase general fund revenue by about \$5.9 million in FY10 (111 million gallons X 77% packaged X 50% sold at food stores X \$2 per gallon X 6.9% tax). Since local governments are held harmless from the food deduction created in Section 7-9-92 NMSA 1978, this entire revenue increase would benefit the general fund.

SIGNIFICANT ISSUES

The bill discourages consumption of soft drinks by increasing their price relative to other beverages. A 12 ounce can of soda contains 10 teaspoons of sugar. According to DOH, US consumption of sweetened beverages has doubled in adults and tripled in adolescents since the 1970s. Since the same time, milk consumption has declined by 30 percent.

By broadening the gross receipts tax base slightly, the bill would allow a lower tax rate to generate the same amount of revenue.

PERFORMANCE IMPLICATIONS

DOH reports that the bill supports the DOH FY10 Strategic Plan, Individual Objective 3: Reduce obesity and diabetes in all populations, specifically children and adolescents. It also supports the goals of *The New Mexico Plan to Promote Healthier Weight: 2006-2015*, a guide to promote nutrition, physical activity, and healthier weight.

ADMINISTRATIVE IMPLICATIONS

TRD reports that implementing the food and medical deductions has been unusually complicated and expensive due to programming necessary to distribute hold-harmless payments to local governments. Currently, the definition of food items eligible for the food deduction is the same as the definition for the federal Food Stamps program. Changing the definition will cause administrative problems to grow. Instructions and publications will need revision at minimal costs. There would be a need for taxpayer education.

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc

Retail food stores will also experience administrative impacts. Food stores will need to reprogram their systems to include receipts from soft drink sales in the taxable portion of sales.

TECHNICAL ISSUES

TRD notes the definition of a soft drink should be improved. Because a beverage “commonly referred to as a soft drink” is ambiguous, the proposal would make the food deduction very difficult to interpret. For example, a store might sell Coca-Cola, Red Bull and fructose-sweetened green tea. Under the proposal Coca-Cola would not be eligible for the food deduction; however, it is unclear what the approach would be with the other two products. Red Bull, for example, is marketed as an “energy drink” and is sugared with glucose rather than the more common sucrose. It is unclear if Red Bull would remain eligible for the food deduction by virtue of its use of glucose, or by virtue of its marketing campaign as an “energy drink.” Additionally it would be unclear if fructose-sugared green tea would remain deductible.

Precisely defining “a drink commonly referred to as a soft drink” as a beverage containing artificial carbonation could remove ambiguity. If that was not the intent of the proposal, the following definitions or variations thereof could be used:

“Bottle” means any closed or sealed glass, metal, paper, plastic, or any other type of container regardless of the size or shape of such container;

“Bottled soft drinks” means any complete, ready to consume, nonalcoholic drink, whether carbonated or not, commonly referred to as a soft drink, contained in any bottle;

“Milk” means natural liquid milk, regardless of animal source or butterfat content; or natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; or dehydrated natural milk, whether or not reconstituted;

“Natural fruit juice” means the original liquid resulting from the pressing of fruit, or the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice;

“Natural vegetable juice” means the original liquid resulting from the pressing of vegetables, or the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural vegetable juice;

“Powder” or “other base” means a solid mixture of basic ingredients used in making, mixing, or compounding soft drinks by mixing the powder or other base with water, ice, syrup or simple syrup, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink;

“Simple syrup” means a mixture of sugar and water;

“Soft drink” means any nonalcoholic beverage sold for human consumption including, but not limited to, the following: soda water, ginger ale, all drinks commonly referred to as cola, lime, lemon, lemon-lime, and other flavored drinks, whether naturally or artificially flavored, including any fruit or vegetable drink containing ten percent (10%) or less natural fruit juice, natural vegetable juice, and all other drinks and beverages commonly referred to as soft drinks, but not including [milk,] coffee or tea unless the coffee or tea is bottled as a liquid for sale; and

“Syrup” means the liquid mixture of basic ingredients used in making, mixing, or compounding soft drinks by mixing the syrup with water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable juice, or any other product suitable to make a complete soft drink.

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The above definitions were taken from House Bill-1332, proposed in Oklahoma's 1st session of the 49th Legislature (2003).

Statutes in other states have also used the phrase, but have further defined "soft drink." See, e.g. W.Va. Stat. § 11-19-1; Ark. Reg. 1993-8.

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