

# **New Mexico Excise Taxes**

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# Excise Taxes

- What is an “excise” tax?
  - A tax that is usually on one specific good or service, or a class of goods or services, or a particular activity or use.
  - A tax that is considered to be indirect – imposed on the retailer or other seller, but passed on to the consumer.
  - Revenues are often, but not always, directed to a special fund related to the object of taxation.
  - Imposed by both the federal and state governments, and sometimes local governments.
  - Tend to be volatile, based on consumption.

# Common Excise Taxes

- **Some Federal Excise Taxes**
  - Gasoline tax, tobacco products taxes, other particularized services and products.
- **Some Common State Excise Taxes**
  - Gasoline tax, tobacco products tax, liquor taxes, insurance premium taxes.
  - Gross receipts taxes and severance taxes are usually considered a form of excise tax as well.

# Specific Excise Taxes Presented

- New Mexico has many excise taxes.
- This presentation focuses on four specific excise taxes:
  - Liquor Excise Tax (Section 7-17-1 *et seq.*, NMSA 1978)
  - Cigarette Tax (Section 7-12-1 *et seq.*, NMSA 1978)
  - Tobacco Products Tax (Section 7-12A-1 *et seq.*, NMSA 1978)
  - Cannabis Excise Tax (Section 7-42-1 *et seq.*, NMSA 1978)

# Excise Taxes and Gross Receipts Taxes

- Gross receipts taxes are often considered a form of general excise tax, and some goods and services subject to specific excise tax are therefore exempted from gross receipts tax to prevent double taxation.
- But this is NOT the case with the four excise taxes discussed here.
  - Imposition of excise tax may occur at the same or a different stage of the marketing of the product.
  - For example, retail sales of non-medical cannabis are subject to both Cannabis Excise Tax and gross receipts tax.
  - But liquor wholesalers pay the Liquor Excise Tax, while liquor retailers pay gross receipts tax on their sales of alcoholic beverages.
  - Both cannabis and liquor wholesalers may use the “sale for resale” deduction to avoid paying gross receipts tax on their receipts.

# Liquor Excise Tax

- Tax on all forms of alcohol for consumption.
  - Applies to beer, wine, fortified wine, cider, spirituous liquors.
  - Different rates apply, depending on the type of beverage.
  - Tax calculated based on volume of product sold.
    - Note: some measures are per liter, some per gallon.
    - Rates not adjusted for inflation, so effective tax rate falls over time due to inflation.
  - Special rates exist for microbrewers, small winegrowers, and craft distillers.
- Tax applies only to wholesalers.
  - But retailers, etc., pay gross receipts tax on their receipts from the sale of alcoholic beverages.

# Liquor Excise Tax Distributions

- Liquor Excise Tax revenues distributed pursuant to Section 7-1-6.40, NMSA 1978.
  - 45% of revenues go to the local DWI grant fund.
  - \$20,750 of revenues go to municipalities in Class A counties with a population greater than 30,000 but less than 60,000 for the provision of alcohol treatment and rehabilitation services for street inebriates.
  - Since July 1, 2019, five percent of revenues go to the drug court fund.
  - Remainder of revenues go to the general fund.

# Liquor Excise Tax Revenues and Distributions

- The following are the total revenues from the Liquor Excise Tax for Fiscal Years 2020-2023:
  - Fiscal Year 2020: \$49.6 million
  - Fiscal Year 2021: \$49.5 million
  - Fiscal Year 2022: \$50.7 million
  - Fiscal Year 2023: \$49.5 million
  - Note: Fiscal Year 2023 figures are not final, subject to adjustment and audit.
  - Special gross receipts tax deduction for dispenser's license passed in 2021, Section 7-9-119, NMSA 1978; \$50,000 deduction from gross receipts for taxable years 2022 through 2025.



# Cigarette Tax

- Tax applies only to “cigarettes” as defined in the act.
  - Distinguished from other forms of tobacco products, especially cigars and little cigars.
- Tax is \$0.10 per cigarette “sold, given or consumed.”
- Applies to “distributors”.
  - Does not include retailers; but retailers may only sell cigarettes obtained from distributors.
  - Does not apply to certain manufacturers, exporters and importers.
- Special rules for tribal sales.
- For purposes of gross receipts tax, receipts of retailers include amounts paid to distributors for Cigarette Tax. 3.2.1.15(G), NMAC.
  - This equates to pyramiding: retailers pay gross receipts tax on the cigarette taxes they collected and paid.

# Cigarette Tax Distributions

- Tax revenues are distributed pursuant to Section 7-1-6.11, NMSA 1978.
  - Distributions to the Board of Regents of the University of New Mexico to benefit the comprehensive cancer center, and to pay debt service on bonds issued to benefit the comprehensive cancer center.
  - Distribution to the New Mexico Finance Authority (NMFA) to fund Department of Health facilities, for credit enhancement of Public Project Revolving Fund and other bonds, and to benefit the rural county cancer treatment fund.
  - Remainder goes to general fund.
  - Percentages to each beneficiary have changed over time.

# Cigarette Tax Revenues and Distributions

- Cigarette Tax Total Revenues, Fiscal Years 2020 – 2022
  - Fiscal Year 2020: \$86.8 million
  - Fiscal Year 2021: \$90.2 million
  - Fiscal Year 2022: \$80.0 million
  - Fiscal Year 2023: \$78.1 million
  - Note: Fiscal Year 2023 figures are not final, subject to adjustment and audit.

# Tobacco Products Tax

- Tobacco Products Tax applies to all other tobacco products than cigarettes:
  - Cigars and little cigars
  - E-cigarettes, including e-liquids and closed system cartridges
  - Other products containing tobacco (e.g. chewing tobacco)
- Differing rates depending on the product.
- Some tribal exemption; but treatment is different than for cigarettes.
- Tax is on the manufacture or acquisition of the tobacco product which is distributed in the ordinary course of business.
- Receipts from sales of tobacco products are also subject to gross receipts tax.

# Tobacco Products Tax Revenues and Distributions

- No special distributions of revenues from this tax; all revenues go to the general fund.
- Total Revenues for Fiscal Years 2020-2022
  - Fiscal Year 2020: \$12.2 million
  - Fiscal Year 2021: \$11.2 million
  - Fiscal Year 2022: \$12.3 million
  - Fiscal Year 2023: \$12.3 million
  - Note: Fiscal Year 2023 figures are not final, subject to adjustment and audit. Final figures will be available in December.

# Cannabis Excise Tax

- Applies only to retail sales of non-medical cannabis products.
  - These sales commenced on April 1, 2022, so data are still contingent.
  - Revenues and distributions may vary early in this new tax program due to taxpayer misreporting issues, amended returns, adaption of businesses to the tax program.
- Tax is based on the price paid for the cannabis product.
- Tax is currently 12%, rising in one-percent increments starting July 1, 2025, to a maximum 18% starting July 1, 2030.
- Gross Receipts and Compensating Tax also applies to receipts from retail sales of non-medical cannabis products.
  - GRT was computed on top of Cannabis Excise Tax; i.e., receipts included amounts received as payment of Cannabis Excise Tax.
  - This equated to pyramiding: retailers paid gross receipts tax on the cannabis taxes they collected and paid.
  - Pyramiding was removed in the 2023 Regular Session.

# Cannabis Excise Tax Revenues and Distributions

- Retail sales of non-medical cannabis products commenced on April 1, 2022.
  - First reports were due May 25, 2022 for sales made in April 2022.
  - FY 2023 data are not final, and are subject to change.
- Revenues to date:
  - Fiscal Year 2022: \$7.6 million
  - Fiscal Year 2023: \$36.5 million
  - Two-thirds of revenues go to the state general fund; one-third of revenues go to local governments.

# Special Note on Medical Sales of Cannabis Products

- The Taxation and Revenue Department previously taxed retail medical sales under the GRT prior to 2021 legislation expressly allowing medical sales to use the prescription drug GRT deduction under Section 7-9-73.2.
- In January 2020, the Court of Appeals ruled that sellers of medical cannabis products were entitled to take advantage of the prescription drug deduction.
  - The Supreme Court granted, then quashed, a writ of certiorari.
  - The decision was codified by the Legislature as of June 28, 2021.
- As a result of the decision, the Department has issued, or anticipates issuing, approximately \$25.6 million in refunds.



# Questions?

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