

1 SENATE BILL 374

2 **46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

3 INTRODUCED BY

4 Don Kidd

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10 AN ACT

11 RELATING TO TAXATION; ENACTING THE SOFT DRINK TAX ACT;
12 PROVIDING FOR DISTRIBUTION TO SUPPORT THE MEDICAID PROGRAM;
13 MAKING AN APPROPRIATION.

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

16 Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
17 through 9 of this act may be cited as the "Soft Drink Tax Act".

18 Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the
19 Soft Drink Tax Act:

20 A. "bottled soft drink" means any complete, ready-
21 to-consume soft drink contained in a closed or sealed glass,
22 metal, paper, plastic or other type of container regardless of
23 size or shape;

24 B. "department" means the taxation and revenue
25 department, the secretary of taxation and revenue or any

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1 employee of the department exercising authority lawfully
2 delegated to that employee by the secretary;

3 C. "soft drink" means a nonalcoholic flavored
4 beverage containing any sweetener additive, such as corn
5 fructose, sugar or aspartame, and includes:

6 (1) ginger ale and colas or drinks commonly
7 referred to as soft drinks;

8 (2) any fruit or vegetable drink containing
9 ten percent or less natural fruit or vegetable juice; and

10 (3) any package or container of powder, syrup
11 or other base product intended for mixing to produce a liquid
12 soft drink for dispensing at a retail business; and

13 D. "wholesaler" means a person who receives,
14 stores, manufactures, bottles or sells bottled soft drinks,
15 soft drink syrups, simple syrups or powders or base products
16 for mixing, compounding or making soft drinks for sale to
17 retail dealers, other manufacturers, wholesale dealers or
18 distributors for resale purposes.

19 Section 3. [NEW MATERIAL] IMPOSITION AND RATE OF SOFT
20 DRINK TAX.--An excise tax to be known as the "soft drink tax"
21 is imposed on any wholesaler who sells soft drinks as follows:

22 A. two dollars (\$2.00) per gallon of soft drink or
23 soft drink syrup sold or offered for sale in New Mexico;

24 B. twenty-one cents (\$0.21) per gallon of bottled
25 soft drink sold or offered for sale in New Mexico; and

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1 C. on the sale of a package or container of soft
2 drink powder, syrup or other base product, twenty-one cents
3 (\$.21) per gallon of soft drink that may be produced from each
4 package or container according to the manufacturer's
5 directions.

6 Section 4. [NEW MATERIAL] DEDUCTIONS.--A wholesaler may
7 deduct the value of soft drinks sold and shipped to a person in
8 another state from the units of soft drinks subject to the tax
9 imposed by the Soft Drink Tax Act; provided that the department
10 may require the wholesaler to submit evidence satisfactory to
11 the department that the units have been sold and shipped to a
12 person in another state.

13 Section 5. [NEW MATERIAL] EXEMPTIONS.--Exempt from the
14 tax imposed by the Soft Drink Tax Act are soft drinks sold to
15 or by any instrumentality of the armed forces of the United
16 States engaged in resale activities.

17 Section 6. [NEW MATERIAL] DATE PAYMENT DUE.--The tax
18 imposed by the Soft Drink Tax Act shall be paid on or before
19 the twenty-fifth day of the month following the month in which
20 the taxable event occurs.

21 Section 7. [NEW MATERIAL] REFUND OR CREDIT OF TAX.--The
22 department shall allow a claim for refund or credit as provided
23 in Sections 7-1-26 and 7-1-29 NMSA 1978 for the tax imposed by
24 the Soft Drink Tax Act and paid on soft drinks or soft drink
25 syrup or powder destroyed in shipment, spoiled or otherwise

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1 damaged so as to be unfit for sale or consumption upon
2 submission of proof satisfactory to the department of such
3 destruction, spoilage or damage.

4 Section 8. [NEW MATERIAL] INTERPRETATION OF ACT--
5 ADMINISTRATION AND ENFORCEMENT OF TAX.--

6 A. The department shall interpret the provisions of
7 the Soft Drink Tax Act.

8 B. The department shall administer and enforce the
9 collection of the soft drink tax, and the Tax Administration
10 Act applies to the administration and enforcement of the tax.

11 Section 9. [NEW MATERIAL] SOFT DRINK MEDICAID FUND
12 CREATED.--The "soft drink medicaid fund" is created in the
13 state treasury. The fund and income produced by the fund are
14 appropriated to the human services department for expenditure
15 in fiscal year 2005 and future years on the medicaid program
16 and shall be held and used solely for the purpose of supporting
17 the state medicaid program and shall not be used to pay general
18 or special obligations or debts of the state or to fund other
19 programs. The fund shall be administered by the human services
20 department and shall be expended upon warrants issued by the
21 secretary of finance and administration upon vouchers signed by
22 the secretary of human services.

23 Section 10. A new section of the Tax Administration Act
24 is enacted to read:

25 "[NEW MATERIAL] DISTRIBUTION--SOFT DRINK TAX.--Pursuant to
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1 the provisions of Section 7-1-6.1 NMSA 1978, the net receipts
2 of the tax imposed by the Soft Drink Tax Act shall be
3 distributed to the soft drink medicaid fund and invested by the
4 state treasurer as general fund revenues are invested."

5 Section 11. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2004.

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