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SENATE BILL 283

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO TAXATION; ENACTING THE SOFT DRINK TAX ACT; MAKING
DISTRIBUTIONS; MAKING AN APPROPRIATION.

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

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

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

A. "department" means the taxation and revenue
department, the secretary of taxation and revenue or any
employee of the department exercising authority lawfully
delegated to that employee by the secretary;

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

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

3 (2) any fruit or vegetable drink containing
4 less than fifty percent natural fruit or vegetable juice; and

5 (3) any package or container of powder, syrup,
6 concentrate or other base product intended for mixing to
7 produce a liquid soft drink; and

8 C. "wholesaler" means a person who sells any soft
9 drink for resale in New Mexico.

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

13 A. three cents (\$0.03) for each twelve fluid ounces
14 of soft drink sold in New Mexico;

15 B. one dollar ninety-two cents (\$1.92) per gallon
16 of soft drink syrup or soft drink concentrate sold in New
17 Mexico; and

18 C. on the sale of a package or container of soft
19 drink powder or other base product, thirty-two cents (\$0.32)
20 per gallon of soft drink that may be produced from each package
21 or container according to the manufacturer's directions.

22 Section 4. [NEW MATERIAL] DEDUCTIONS. --A wholesaler may
23 deduct the value of soft drinks sold and shipped to a person in
24 another state from the units of soft drinks subject to the tax
25 imposed by the Soft Drink Tax Act; provided that the department

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1 may require the wholesaler to submit evidence satisfactory to
2 the department that the units have been sold and shipped to a
3 person in another state.

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

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

12 Section 7. [NEW MATERIAL] REFUND OR CREDIT OF TAX. -- The
13 department shall allow a claim for refund or credit as provided
14 in Sections 7-1-26 and 7-1-29 NMSA 1978 for the tax imposed by
15 the Soft Drink Tax Act and paid on soft drinks or soft drink
16 syrup or powder destroyed in shipment, spoiled or otherwise
17 damaged so as to be unfit for sale or consumption upon
18 submission of proof satisfactory to the department of such
19 destruction, spoilage or damage.

20 Section 8. [NEW MATERIAL] INTERPRETATION OF ACT--
21 ADMINISTRATION AND ENFORCEMENT OF TAX. --

22 A. The department shall interpret the provisions of
23 the Soft Drink Tax Act.

24 B. The department shall administer and enforce the
25 collection of the soft drink tax, and the Tax Administration

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1 Act applies to the administration and enforcement of the tax.

2 Section 9. [NEW MATERIAL] SOFT DRINK MEDICAID FUND

3 CREATED. --The "soft drink medicaid fund" is created in the
4 state treasury. The fund and income produced by the fund are
5 appropriated to the human services department for expenditure
6 in fiscal year 2006 and subsequent fiscal years on the medicaid
7 program and shall be held and used solely for the purpose of
8 supporting the state medicaid program and shall not be used to
9 pay general or special obligations or debts of the state or to
10 fund other programs. The fund shall be administered by the
11 human services department and shall be expended upon warrants
12 issued by the secretary of finance and administration upon
13 vouchers signed by the secretary of human services.

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

16 "[NEW MATERIAL] DISTRIBUTIONS--SOFT DRINK TAX. --Pursuant
17 to the provisions of Section 7-1-6.1 NMSA 1978:

18 A. ninety percent of the net receipts from the soft
19 drink tax shall be distributed to the soft drink medicaid fund
20 and invested by the state treasurer as general fund revenues
21 are invested;

22 B. four percent of the net receipts from the soft
23 drink tax shall be retained by the taxation and revenue
24 department to defray the costs of administering the provisions
25 of the Soft Drink Tax Act;

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C. three percent of the net receipts from the soft drink tax shall be distributed to the department of health for state obesity prevention and awareness programs;

D. two percent of the net receipts from the soft drink tax shall be distributed to the public education department for public school wellness education initiatives; and

E. one percent of the net receipts from the soft drink tax shall be distributed to the public education department for grants to public schools that do not permit sales of soft drinks to students on campus; provided that the public education department shall not make a grant to a public school that exceeds three dollars (\$3.00) per elementary school student, six dollars (\$6.00) per middle school student or twelve dollars (\$12.00) per high school student attending that public school."

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2005.