F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	1/29/08		
SPONSOR	Lundstrom	**LAST UPDATED**	1/29/08	**HB**	238
SHORT TITLE	Soft Drink Tax Act			**SB**	
				ANALYST	Schardin

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	9,977	Recurring	Soft Drink Dialysis Fund
	416	Recurring	TRD

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	9,997	10,226	Recurring	Soft Drink Dialysis Fund
	416	426	Recurring	TRD

(Parenthesis ( ) Indicate Revenue Decreases)

Related to SB431.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 238 creates a new soft drink tax to be administered and enforced by TRD. The bill defines a soft drink as a nonalcoholic flavored beverage with any sweetener additive, including drinks commonly referred to as soft drinks, fruit and vegetable drinks containing less than 50 percent natural juice, and syrup, concentrate, powder or other base product intended for mixing to produce liquid soft drink.

The soft drink tax would be imposed on the sale of soft drinks in New Mexico by wholesalers at a rate of $0.01 per 12-ounce liquid soft drink, $0.64 per gallon of syrup or concentrate, and $0.106 per gallon that may be produced from soft drink powder or other base product.

The bill would allow soft drink wholesalers to deduct the value of soft drinks sold and shipped out of New Mexico from their taxable value upon providing proof of out-of-state shipment to TRD. The bill also creates an exemption from the soft drink tax for soft drinks sold to or by the U.S. armed forces and a refund or credit for soft drinks destroyed or damaged when proof is supplied to TRD.

Like many of the state's other general and selective sales taxes, the soft drink tax will be due on or before the 25th day of the month following the month in which the taxable event occurs.

The bill provides that 96 percent of soft drink tax net receipts will be distributed to the newly-created soft drink dialysis fund and the remaining 4 percent will be distributed to TRD to administer the tax.

The bill creates the non-reverting soft drink dialysis fund, which will be administered by DOH and invested by the State Treasurer. Money in the fund and the fund's interest earnings will be appropriated to DOH to make grants and loans for the purchase dialysis equipment and training of dialysis equipment operators.

Provisions of the bill will become effective on July 1, 2008.

FISCAL IMPLICATIONS

According to TRD, the Beverage Marketing Corporation cites that in 2005, the average American consumed 82.6 gallons of soft drinks per year. With a 2005 population of 1.8 million, this assumes that New Mexicans consumed about 148.6 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. Assuming that 2 percent of soft drink sales would be subject to the $0.64 per gallon tax on syrup or concentrate, 49 percent would be subject to the $0.106 per gallon tax on drink powder or other base product, and 49 percent would be subject to the $0.01 tax per 12 fluid ounces of soft drink, the total revenue of the soft drink tax would be about $10.4 million in FY09. That revenue is expected to grow by about 2.5 percent per year as the state's population grows. Revenue will be distributed 96 percent to the soft drink dialysis fund and 4 percent to TRD.

SIGNIFICANT ISSUES

The bill would provide a financial disincentive to consume soft drinks by increasing their price relative to other beverages. A 12 ounce can of soda contains 10 teaspoons of sugar. According to DOH, U.S. 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 appropriating 96 percent of revenue raised by the soft drink tax to DOH for dialysis equipment and training, DOH reports the bill will fund better access to dialysis intervention programs in impoverished counties. DOH reports that kidney disease is the ninth leading cause of death in the U.S. with diabetes and hypertension accounting for 60 percent of new cases. According to DOH, in 2001 New Mexico ranked 3rd highest in the nation for prevalence of diabetes-related kidney failure.

In New Mexico, one in 10 adults has diabetes. About 74 percent of those know they have the disease, while the other 26 percent do not know. Medical costs associated with diabetes total over $1 billion per year in New Mexico.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

The new tax program proposed would have a high administrative impact on TRD. At least two additional FTE will be needed to create forms and publications, process refunds, and develop audit and compliance procedures. TRD reports these FTE will cost an additional $60 thousand nonrecurring in FY09, which is far less than the 4 percent of the tax TRD will retain for administrative costs.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 238 is related to Senate Bill 431, which proposes amending the gross receipts tax deduction for food to put the tax back on soft drinks.

TECHNICAL ISSUES

TRD suggests that the bill may be amended to include an exemption for tribal sales. The federal preemption doctrine generally protects tribal self-government for state law incursions, and provides barriers to many state taxes. For example, tribes are exempt from special fuels taxes, manufacturer excise taxes, communications-related taxes, and highway vehicle use taxes.

TRD also recommends changing the word “value” to “units” on page 2, line 23 to make it clear that the deduction is intended to exclude the units shopped out of state, not the value of products shipped out of state.

TRD recommends clarifying page 2, lines 11-21 to be clear that the sizes stated are not the only sizes that will be taxed. If the tax applies to other sizes it would make reporting more difficult for wholesalers.

SS/mt