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SENATE BILL 3

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2010**

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO TAXATION; CHANGING THE DEFINITION OF "FOOD" FOR  
PURPOSES OF THE GROSS RECEIPTS TAX DEDUCTION ON FOOD; USING  
STREAMLINED SALES TAX DEFINITIONS.

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

Section 1. Section 7-9-92 NMSA 1978 (being Laws 2004,  
Chapter 116, Section 5) is amended to read:

"7-9-92. DEDUCTION--GROSS RECEIPTS--SALE OF FOOD AND FOOD  
INGREDIENTS AT RETAIL FOOD STORE.--

A. Receipts from the sale of food and food  
ingredients at a retail food store that are not exempt from  
gross receipts taxation and are not deductible pursuant to  
another provision of the Gross Receipts and Compensating Tax  
Act may be deducted from gross receipts. The deduction  
provided by this section shall be separately stated by the

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1 taxpayer.

2 B. For the purposes of this section:

3 [~~(1)~~ "food" means any food or food product for  
4 home consumption that meets the definition of food in 7 USCA  
5 2012(g)(1) for purposes of the federal food stamp program; and]

6 (1) "alcoholic beverage" means a beverage that  
7 is suitable for human consumption and that contains one-half  
8 percent or more of alcohol by volume;

9 (2) "candy" means a preparation made of sugar,  
10 honey or other natural or artificial sweetener in combination  
11 with chocolate, fruits, nuts or other ingredients or flavorings  
12 in the form of bars, drops or pieces for which refrigeration is  
13 not required; but "candy" does not mean any preparation  
14 containing flour;

15 (3) "food and food ingredients" means  
16 substances, whether in liquid, concentrated, solid, frozen,  
17 dried or dehydrated form, that are sold for ingestion or  
18 chewing by humans and are consumed for their taste or  
19 nutritional value; but "food and food ingredients" does not  
20 include alcoholic beverages, tobacco, candy or soft drinks;

21 [~~(2)~~] (4) "retail food store" means an  
22 establishment that sells food and food ingredients for home  
23 preparation and consumption and that meets the definition of  
24 retail food store in 7 USCA 2012[~~(k)~~](p)(1) for purposes of the  
25 federal [~~food stamp~~] supplemental nutrition assistance program,

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whether or not the establishment participates in the [~~food stamp~~] supplemental nutrition assistance program;

(5) "soft drink" means nonalcoholic beverages that contain natural or artificial sweeteners; but "soft drink" does not include a beverage that contains milk or milk products, soy, rice or similar milk substitutes or greater than fifty percent vegetable or fruit juice by volume; and

(6) "tobacco" means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.