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HOUSE BILL 212

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Edward C. Sandoval and Steven P. Neville

AN ACT

RELATING TO LIQUOR EXCISE TAXES; AUTHORIZING COUNTIES TO IMPOSE
A LOCAL LIQUOR EXCISE TAX; LIMITING RATES OF LOCAL LIQUOR
EXCISE TAXES.

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

SECTION 1. Section 7-24-9 NMSA 1978 (being Laws 1989,
Chapter 326, Section 2) is amended to read:

"7-24-9. DEFINITIONS.--As used in the Local Liquor Excise
Tax Act:

A. "alcoholic beverages" means distilled or
rectified spirits, potable alcohol, brandy, whiskey, rum, gin
and aromatic bitters or any similar alcoholic beverage,
including blended or fermented beverages, dilutions or mixtures
of one or more of the foregoing containing more than one-half
of one percent alcohol, but excluding medicinal bitters;

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B. "county" means:

(1) a class B county having a population of more than fifty-six thousand but less than seventy-five thousand, according to the most recent federal decennial census or any subsequent decennial census, and having a net taxable value for rate-setting purposes for the 1988 or any subsequent property tax year of more than five hundred million dollars (\$500,000,000) but less than seven hundred million dollars (\$700,000,000); or

(2) a county other than a class B county defined in Paragraph (1) of this subsection;

C. "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;

D. "governing body" means the board of county commissioners of a county;

E. "microbrewer" means a person who is licensed as a small brewer pursuant to Section 60-6A-26.1 NMSA 1978 to produce beer in New Mexico and who produces less than five thousand barrels of beer in a calendar year;

~~[E-]~~ F. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by

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1 law, any federal, state or other governmental unit or
2 subdivision or agency, department or instrumentality thereof;

3 ~~[F.]~~ G. "price" means the total amount of money or
4 the reasonable value of other consideration or both paid for
5 alcoholic beverages, inclusive of the amount of any tax paid
6 pursuant to the Liquor Excise Tax Act; ~~[and~~

7 ~~G.]~~ H. "retailer" means any person having a place
8 of business within the county who sells, offers for sale or
9 possesses for the purpose of selling alcoholic beverages within
10 the county;

11 I. "small winegrower" means a winegrower who is
12 licensed pursuant to Section 60-6A-11 NMSA 1978 and who
13 produces fewer than one million two hundred thousand liters of
14 wine in a year; and

15 J. "tribe" means a federally recognized Indian
16 nation, tribe or pueblo that is located wholly or partly within
17 New Mexico."

18 SECTION 2. Section 7-24-10 NMSA 1978 (being Laws 1989,
19 Chapter 326, Section 3) is amended to read:

20 "7-24-10. AUTHORIZATION TO IMPOSE LOCAL LIQUOR EXCISE
21 TAX--RATE--USE OF PROCEEDS--ELECTION REQUIRED.--

22 A. The majority of the members elected to the
23 governing body of a county identified in Paragraph (1) of
24 Subsection B of Section 7-24-9 NMSA 1978 may enact an ordinance
25 imposing on any retailer an excise tax on the price paid by the

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1 retailer for alcoholic beverages purchased by the retailer upon
2 which the tax imposed ~~[by]~~ pursuant to this ~~[section]~~
3 subsection has not been paid. The tax may be imposed at a rate
4 not to exceed five percent, provided that any lower rate shall
5 be an even multiple of one percent. The tax imposed ~~[under]~~
6 pursuant to this ~~[section]~~ subsection may be referred to as the
7 "local liquor excise tax". Prior to the general election in
8 2014, any tax imposed ~~[under]~~ pursuant to this ~~[section]~~
9 subsection shall be for a period of not more than three years
10 from the effective date of the ordinance imposing the tax.
11 Beginning with the general election in 2014, a local liquor
12 excise tax imposed or reimposed in a county identified in
13 Paragraph (1) of Subsection B of Section 7-24-9 NMSA 1978 shall
14 be imposed for a four-year period. An ordinance imposing a
15 local liquor excise tax pursuant to this subsection shall
16 become effective only if approved by the voters in an election
17 held pursuant to Subsection F of this section.

18 B. The majority of the members elected to the
19 governing body of a county described in Paragraph (2) of
20 Subsection B of Section 7-24-9 NMSA 1978 may enact an
21 ordinance, to become effective only if approved by the voters
22 in an election held pursuant to Subsection F of this section,
23 that imposes on all wholesalers distributing alcoholic
24 beverages to retailers in that county, including tribes or
25 tribally licensed retailers seeking a state license to purchase

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1 alcoholic beverages for resale on the tribe's land, a tax that
2 may be referred to as a "local liquor excise tax". The local
3 liquor excise tax shall be as follows:

4 (1) on spirituous liquors, not more than
5 ninety-nine cents (\$.99) per liter;

6 (2) on beer, except as provided in Paragraph
7 (5) of this subsection, not more than twenty-five cents (\$.25)
8 per gallon;

9 (3) on wine, except as provided in Paragraphs
10 (4) and (6) of this subsection, not more than twenty-eight
11 cents (\$.28) per liter;

12 (4) on fortified wine, not more than ninety-
13 three cents (\$.93) per liter;

14 (5) on beer manufactured or produced by a
15 microbrewer, provided that the beer is sold in this state and
16 that proof is furnished to the county governing body and the
17 department that the beer was manufactured or produced by a
18 microbrewer, not more than five cents (\$.05) per gallon;

19 (6) on cider, not more than twenty-five cents
20 (\$.25) per gallon; and

21 (7) on wine manufactured or produced by a
22 small winegrower, provided that the wine is sold in this state
23 and that proof is furnished to the county governing body and
24 the department that the wine was manufactured or produced by a
25 small winegrower, no local liquor excise tax shall be imposed.

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1 C. A tax imposed pursuant to Subsection B of this
2 section shall be imposed for a period of not more than four
3 years from the effective date of the tax.

4 D. Within the final year that a local liquor excise
5 tax is in effect pursuant to either Subsection A or B of this
6 section, the governing body may enact an ordinance to extend
7 the term of the tax, to begin immediately following the
8 termination of the tax currently in effect, and submit the
9 question of the tax to the voters of the county in the same
10 manner as required by Subsection F of this section to approve
11 the original tax. The governing body may impose a local liquor
12 excise tax pursuant to this subsection for a period of up to
13 four years. The question submitted to the voters shall include
14 the proposed term of the local liquor excise tax.

15 [~~B.—The~~] E. A governing body at the time of
16 enacting an ordinance imposing [the] a tax authorized in
17 [~~Subsection A of~~] this section shall dedicate the revenue to
18 fund [~~educational programs and~~] direct program services,
19 excluding indirect costs, for the prevention and treatment of
20 alcoholism and drug abuse within the county and for no other
21 purpose. After approval of the imposition of a local liquor
22 excise tax by the voters but before the effective date of the
23 ordinance, the governing body shall hold a public meeting for
24 the purpose of inviting comment on and suggestions for the most
25 appropriate programs on which to expend the revenue produced by

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1 the tax. The governing body shall invite representatives from
2 the appropriate [~~Indian~~] tribes [~~nations and pueblos~~] located
3 in that county to the meeting. If the governing body awards
4 [~~any~~] a contract using funds derived from the local liquor
5 excise tax, it shall do so only through a selection process
6 requiring submission of sealed bids or proposals after public
7 notice of the opportunity to submit the sealed bids or
8 proposals.

9 [G.] F. The governing body enacting an ordinance
10 imposing [~~the~~] a local liquor excise tax shall submit the
11 question of imposing the tax to the qualified voters of the
12 county at a [~~regular or special~~] general election.

13 [~~D. Only those voters who are registered within the~~
14 ~~county shall be permitted to vote.~~]

15 G. In a county that has, within the county:

16 (1) no incorporated municipality that extends
17 across the county boundary into a second county in New Mexico,
18 only the voters registered within the county shall vote on the
19 question of imposing a local liquor excise tax; or

20 (2) at least one incorporated municipality
21 that extends across the county's exterior boundaries into a
22 second county in New Mexico, all of the voters of that
23 municipality shall be allowed to vote on the question of
24 imposing a local liquor excise tax in the first county,
25 provided that, once the first county implements a local liquor

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1 excise tax that the voters of the incorporated municipality
2 that extends across the county boundary have approved, that
3 local liquor excise tax shall be imposed in the entire
4 municipality and the municipality shall be excluded from
5 imposition of an additional local liquor excise that the second
6 county in which the municipality is located may subsequently
7 impose. All voters of the municipality that extends across the
8 county boundary would be ineligible to vote on the question of
9 imposing a local liquor excise tax adopted by the governing
10 body of the second county.

11 H. Two counties that share a municipality that
12 extends across the counties' common boundary may enter into a
13 joint powers agreement to share the revenue from a local liquor
14 excise tax imposed within the shared municipality.

15 I. The election shall be called, conducted and
16 canvassed in substantially the same manner as provided by law
17 for general elections.

18 [~~E.~~] J. If at an election called pursuant to this
19 section [~~a~~] the majority of the voters voting on the question
20 vote in the affirmative on the question, then the ordinance
21 imposing the local liquor excise tax shall be approved. If at
22 such an election a majority of the voters voting on the
23 question [~~fail~~] fails to approve the question, then the
24 ordinance shall be disapproved and the question required to be
25 submitted by [~~Subsection B of~~] this section shall not be

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1 submitted to the voters for a period of at least [~~one year~~] two
2 years from the date of the election.

3 [F. ~~Any~~] K. An ordinance enacted under the
4 provisions of this section [~~which~~] that imposes a local liquor
5 excise tax or changes the rate of tax imposed shall include an
6 effective date [~~which~~] that is the first day of any month
7 [~~which~~] that begins no earlier than ninety days after the date
8 of the election. A certified copy of [~~any~~] an ordinance
9 imposing a local liquor excise tax shall be mailed or
10 personally delivered to the department within five days after
11 the ordinance is certified to have been approved by the voters.

12 [G. ~~Any~~] L. An ordinance repealing [~~the imposition~~
13 ~~of~~] a tax [~~under~~] imposed pursuant to the provisions of this
14 section shall contain an effective date [~~which~~] that is the
15 first day of any month beginning no earlier than sixty days
16 from the date that the ordinance repealing the tax is adopted
17 by the governing body. A certified copy of [~~any~~] an ordinance
18 repealing a local liquor excise tax shall be mailed or
19 personally delivered to the department within five days of the
20 date the ordinance is adopted."

21 **SECTION 3.** Section 7-24-15 NMSA 1978 (being Laws 1989,
22 Chapter 326, Section 8) is amended to read:

23 "7-24-15. [~~ADMINISTRATIVE CHARGE~~] ADMINISTRATION.--The
24 department [~~may deduct an amount not to exceed five percent of~~
25 ~~the proceeds of a local liquor excise tax as a charge for the~~

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1 ~~administrative costs of collection, which amount shall be~~
2 ~~retained by the department for use in administration of]~~ shall
3 collect the proceeds of the taxes imposed pursuant to the Local
4 Liquor Excise Tax Act and distribute the net receipts pursuant
5 to Section 7-1-6.1 NMSA 1978 to the county from which the local
6 liquor excise tax revenue was remitted."

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