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SENATE BILL 416

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO TAXATION; EXCLUDING MINIMAL-TO-NO NUTRITIONAL VALUE
FOOD FROM THE DEDUCTION FROM GROSS RECEIPTS FOR THE SALE OF
FOOD AT A RETAIL FOOD STORE; REQUIRING THE TAXATION AND REVENUE
DEPARTMENT TO PROMULGATE RULES.

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 AT
RETAIL FOOD STORE.--

A. Receipts from the sale of food 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

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1 separately stated by the taxpayer.

2 B. The department shall promulgate rules
3 implementing the provisions of this section.

4 [~~B.~~] C. For the purposes of this section:

5 (1) "baked and fried goods" means baked or
6 fried dough, batter, mixes and decoration products such as
7 cakes, cookies and pastries that are high in saturated fat or
8 sugar;

9 (2) "candy" means snacks prepared with sugar,
10 honey, salt, saturated fat and other natural or artificial
11 sweeteners in combination with chocolate, dried fruits, fudge,
12 marshmallows, nuts, mints, peanut brittle, white flour and
13 other ingredients or flavorings in many forms such as soft,
14 hard, bars, drops, liquid, spray, floss, carbonated,
15 crystallized, tape, paper, thread, chewy, jelly, gum, powder or
16 pieces;

17 (3) "corn syrup" means syrup made from
18 cornstarch, consisting of dextrose, maltose and dextrins;

19 [~~(4)~~] (4) "food" means any food or food
20 product for home consumption that meets the definition of food
21 in 7 USCA [~~2012(g)(1)~~] 2012(k)(1) for purposes of the federal
22 [~~food stamp~~] supplemental nutrition assistance program [and],
23 except "food" does not include minimal-to-no nutritional value
24 food;

25 (5) "frozen desserts" means any sweet item

1 made by freezing liquid or semisolids, based on naturally or
2 artificially flavored water, fruit purees, dairy or dairy
3 substitutes and custards, combined with fruits, nuts, candy,
4 sweets or other ingredients;

5 (6) "minimal-to-no nutritional value food"
6 means sweetened beverages and prepackaged and non-prepackaged
7 snacks stripped of essential nutrients and high in salt,
8 saturated fat and sugar, including baked and fried foods,
9 candy, frozen desserts, pastries, pudding and gelatin-based
10 deserts, snack chips and crisps, sweetened beverages and sweets;

11 (7) "natural fruit juice" or "fruit juice"
12 means the original liquid resulting from the pressing of fruit;
13 the liquid resulting from the reconstitution of fruit juice
14 concentrate; the liquid resulting from the restoration of fruit
15 concentrate; or the liquid resulting from the restoration of
16 water to dehydrated fruit juice;

17 (8) "natural vegetable juice" or "vegetable
18 juice" means the original liquid resulting from the pressing of
19 one or more vegetables; the liquid resulting from the
20 reconstitution of vegetable juice concentrate; or the liquid
21 resulting from the restoration of water to dehydrated vegetable
22 juice;

23 (9) "pastries" means any mixed, baked or fried
24 products made primarily but not exclusively from any form of
25 flour, sugar, artificial sweeteners, dairy, shortening, oil,

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1 butter, baking powder, nuts, fruits, eggs, jelly and other
2 filling ingredients;

3 (10) "powder or base product" means a solid
4 mixture of basic ingredients, including sugar, used in making,
5 mixing or compounding soft drinks by mixing the powder of other
6 base products with water, ice syrup, simple syrup, fruits,
7 vegetables, fruit juice or any other product suitable to make a
8 sweetened beverage;

9 (11) "pudding and gelatin-based desserts"
10 means any soft, colorful or colorless sweet preparation, which
11 could include dairy, eggs, sugar or other sweeteners, collagen,
12 cornstarch or any other flavorings;

13 [~~2~~] (12) "retail food store" means an
14 establishment that sells food for home preparation and
15 consumption and that meets the definition of retail food store
16 in 7 USCA [~~2012(k)(1)~~] 2012(o)(1) for purposes of the federal
17 [~~food stamp~~] supplemental nutrition assistance program, whether
18 or not the establishment participates in the [~~food stamp~~]
19 supplemental nutrition assistance program;

20 (13) "snack chips and crisps" means crispy
21 type snack foods that are often fried, baked or toasted, such
22 as potato chips, tortilla chips, pita chips or cheese puffs
23 that are high in sodium and fat;

24 (14) "sweetened beverages" means a beverage,
25 whether carbonated or noncarbonated, in any form sold for human

1 consumption and includes sodas, flavored water, sports drinks,
2 energy drinks, fountain drinks, iced coffee, iced tea, flavored
3 drinks, drinks containing sugar with natural fruit juice,
4 natural vegetable juice, or both, and a powder or base product
5 as a liquid for sale;

6 (15) "sweets" means any preparation that has a
7 high content of sugar, sometimes in combination with flour,
8 milk, butter, shortening, eggs, dried fruits and nuts, such as
9 candy, frozen desserts, pastries, pudding and gelatin-based
10 desserts or baked and fried goods;

11 (16) "sweetener" means artificial sweetener,
12 including aspartame, saccharin, sucralose, stevia, cyclamate,
13 xylitol, mogrosides and many others; and

14 (17) "sugar" includes sugar confections made
15 with sucrose, dextrose, fructose, corn syrup, high-fructose
16 corn syrup, dextrin, galactose, glucose, honey, lactose or
17 other processed caloric sweeteners and those derived from fruit
18 juice."

19 SECTION 2. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is January 1, 2018.