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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separately stated by the taxpayer.

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

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

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

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

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

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

(5) "frozen desserts" means any sweet item
made by freezing liquid or semisolids, based on naturally or
artificially flavored water, fruit purees, dairy or dairy
substitutes and custards, combined with fruits, nuts, candy,
sweets or other ingredients;

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

(7) "natural fruit juice" or "fruit juice"
means the original liquid resulting from the pressing of fruit;
the liquid resulting from the reconstitution of fruit juice
concentrate; the liquid resulting from the restoration of fruit
concentrate; or the liquid resulting from the restoration of
water to dehydrated fruit juice;

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

(9) "pastries" means any mixed, baked or fried
products made primarily but not exclusively from any form of
flour, sugar, artificial sweeteners, dairy, shortening, oil,
butter, baking powder, nuts, fruits, eggs, jelly and other filling ingredients;

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

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

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

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

(14) "sweetened beverages" means a beverage, whether carbonated or noncarbonated, in any form sold for human consumption.
consumption and includes sodas, flavored water, sports drinks, energy drinks, fountain drinks, iced coffee, iced tea, flavored drinks, drinks containing sugar with natural fruit juice, natural vegetable juice, or both, and a powder or base product as a liquid for sale;

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

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

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

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