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AN ACT

RELATING TO LIQUOR EXCISE TAX; ADJUSTING THE DEFINITION OF "SMALL WINER OR WINEGROWER"; CLARIFYING TAXATION ON CERTAIN WINE TRANSFERS; PROVIDING FOR PAYMENT OF TAX BY A WHOLESALER WHEN A WHOLESALER DISTRIBUTES WINE PRODUCED BY A NEW MEXICO WINERY.

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

Section 1. Section 7-17-2 NMSA 1978 (being Laws 1966, Chapter 49, Section 2, as amended) is amended to read:

"7-17-2. DEFINITIONS.--As used in the Liquor Excise Tax Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar 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 by volume, but "alcoholic beverages" does not include medicinal bitters;

B. "beer" means an alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

C. "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe

1 apples that contains not less than one-half of one percent of
2 alcohol by volume and not more than seven percent of alcohol
3 by volume;

4 D. "department" means the taxation and revenue
5 department, the secretary of taxation and revenue or any
6 employee of the department exercising authority lawfully
7 delegated to that employee by the secretary;

8 E. "fortified wine" means wine containing more
9 than fourteen percent alcohol by volume when bottled or
10 packaged by the manufacturer, but "fortified wine" does not
11 include:

12 (1) wine that is sealed or capped by cork
13 closure and aged two years or more;

14 (2) wine that contains more than fourteen
15 percent alcohol by volume solely as a result of the natural
16 fermentation process and that has not been produced with the
17 addition of wine spirits, brandy or alcohol; or

18 (3) vermouth and sherry;

19 F. "microbrewer" means a person who produces fewer
20 than five thousand barrels of beer in a year;

21 G. "person" includes, to the extent permitted by
22 law, a federal, state or other governmental unit or
23 subdivision or an agency, department, institution or
24 instrumentality thereof;

25 H. "small winegrower" means a winegrower who

1 produces fewer than nine hundred fifty thousand liters of
2 wine in a year;

3 I. "spirituous liquor" means alcoholic beverages,
4 except fermented beverages such as wine, beer, cider and ale;

5 J. "wholesaler" means a person holding a license
6 issued under Section 60-6A-1 NMSA 1978 or a person selling
7 alcoholic beverages that were not purchased from a person
8 holding a license issued under Section 60-6A-1 NMSA 1978;

9 K. "wine" means an alcoholic beverage other than
10 cider that is obtained by the fermentation of the natural
11 sugar contained in fruit or other agricultural products, with
12 or without the addition of sugar or other products, and that
13 does not contain more than twenty-one percent alcohol by
14 volume; and

15 L. "winegrower" means a person licensed pursuant
16 to Section 60-6A-11 NMSA 1978."

17 Section 2. Section 7-17-5 NMSA 1978 (being Laws 1993,
18 Chapter 65, Section 8, as amended) is amended to read:

19 "7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX.--

20 A. There is imposed on a wholesaler who sells
21 alcoholic beverages on which the tax imposed by this section
22 has not been paid an excise tax, to be referred to as the
23 "liquor excise tax", at the following rates on alcoholic
24 beverages sold:

25 (1) on spirituous liquors, one dollar sixty

1 cents (\$1.60) per liter;

2 (2) on beer, except as provided in Paragraph
3 (5) of this subsection, forty-one cents (\$.41) per gallon;

4 (3) on wine, except as provided in
5 Paragraphs (4) and (6) of this subsection, forty-five cents
6 (\$.45) per liter;

7 (4) on fortified wine, one dollar fifty
8 cents (\$1.50) per liter;

9 (5) on beer manufactured or produced by a
10 microbrewer and sold in this state, provided that proof is
11 furnished to the department that the beer was manufactured or
12 produced by a microbrewer, eight cents (\$.08) per gallon;

13 (6) on wine manufactured or produced by a
14 small winegrower and sold in this state, provided that proof
15 is furnished to the department that the wine was manufactured
16 or produced by a small winegrower, ten cents (\$.10) per liter
17 on the first eighty thousand liters sold and twenty cents
18 (\$.20) per liter on all liters sold over eighty thousand
19 liters but less than nine hundred fifty thousand liters; and

20 (7) on cider, forty-one cents (\$.41) per
21 gallon.

22 B. The volume of wine transferred from one
23 winegrower to another winegrower for processing, bottling or
24 storage and subsequent return to the transferor shall be
25 excluded pursuant to Section 7-17-6 NMSA 1978 from the

1 taxable volume of wine of the transferee. Wine transferred
2 from an initial winegrower to a second winegrower remains a
3 tax liability of the transferor, provided that if the wine is
4 transferred to the transferee for the transferee's use or for
5 resale, the transferee then assumes the liability for the tax
6 due pursuant to this section.

7 C. A transfer of wine from a winegrower to a
8 wholesaler for distribution of the wine transfers the
9 liability for payment of the liquor excise tax to the
10 wholesaler upon the sale of the wine by the wholesaler."

11 Section 3. Section 7-17-6 NMSA 1978 (being Laws 1984,
12 Chapter 85, Section 4, as amended) is amended to read:

13 "7-17-6. DEDUCTION--INTERSTATE SALES--
14 WINEGROWER-TO-WINEGROWER TRANSFERS.--

15 A. A wholesaler may deduct the liters of
16 spirituous liquors, gallons of beer and liters of wine sold
17 and shipped to a person in another state from the units of
18 alcoholic beverages subject to the tax imposed by the Liquor
19 Excise Tax Act; provided that the department may require the
20 wholesaler to submit evidence satisfactory to the department
21 that the units have been sold and shipped to a person in
22 another state.

23 B. A winegrower may deduct the liters of wine
24 transferred to the winegrower from another winegrower for
25 processing, bottling or storage and subsequent return to the

1 transferor from the units of wine subject to the liquor
2 excise tax on the licensed premises of the winegrower."

3 Section 4. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2008._____

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