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SENATE BILL 214

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

INTRODUCED BY

Nancy Rodriguez

AN ACT

RELATING TO LIQUOR EXCISE TAXES; INCREASING THE PRODUCTION  
CAPACITY ALLOWED FOR CLASSIFICATION AS A SMALL WINERY;  
AUTHORIZING CLASS A 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 7-17-2 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

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1 alcohol by volume, but "alcoholic beverages" does not include  
2 medicinal bitters;

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

7 C. "cider" means an alcoholic beverage made from  
8 the normal alcoholic fermentation of the juice of sound, ripe  
9 apples that contains not less than one-half of one percent of  
10 alcohol by volume and not more than seven percent of alcohol by  
11 volume;

12 D. "department" means the taxation and revenue  
13 department, the secretary of taxation and revenue or any  
14 employee of the department exercising authority lawfully  
15 delegated to that employee by the secretary;

16 E. "fortified wine" means wine containing more than  
17 fourteen percent alcohol by volume when bottled or packaged by  
18 the manufacturer, but "fortified wine" does not include:

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

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

25 (3) vermouth and sherry;

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

3 G. "person" includes, to the extent permitted by  
4 law, a federal, state or other governmental unit or subdivision  
5 or an agency, department, institution or instrumentality  
6 thereof;

7 H. "small winegrower" means a winegrower who  
8 produces fewer than [~~nine hundred fifty~~] one million two  
9 hundred thousand liters of wine in a year;

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

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

16 K. "wine" means an alcoholic beverage other than  
17 cider that is obtained by the fermentation of the natural sugar  
18 contained in fruit or other agricultural products, with or  
19 without the addition of sugar or other products, and that does  
20 not contain more than twenty-one percent alcohol by volume; and

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

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

25 "7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX.--

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1           A. There is imposed on a wholesaler who sells  
2 alcoholic beverages on which the tax imposed by this section  
3 has not been paid an excise tax, to be referred to as the  
4 "liquor excise tax", at the following rates on alcoholic  
5 beverages sold:

6                   (1) on spirituous liquors, one dollar sixty  
7 cents (\$1.60) per liter;

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

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

13                   (4) on fortified wine, one dollar fifty cents  
14 (\$1.50) per liter;

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

19                   (6) on wine manufactured or produced by a  
20 small winegrower and sold in this state, provided that proof is  
21 furnished to the department that the wine was manufactured or  
22 produced by a small winegrower, ten cents (\$.10) per liter on  
23 the first eighty thousand liters sold and twenty cents (\$.20)  
24 per liter on all liters sold over eighty thousand liters but  
25 less than ~~[nine hundred fifty]~~ one million two hundred thousand

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1       liters; and

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

4                B.   The volume of wine transferred from one  
5       winegrower to another winegrower for processing, bottling or  
6       storage and subsequent return to the transferor shall be  
7       excluded pursuant to Section 7-17-6 NMSA 1978 from the taxable  
8       volume of wine of the transferee.   Wine transferred from an  
9       initial winegrower to a second winegrower remains a tax  
10      liability of the transferor, provided that if the wine is  
11      transferred to the transferee for the transferee's use or for  
12      resale, the transferee then assumes the liability for the tax  
13      due pursuant to this section.

14               C.   A transfer of wine from a winegrower to a  
15      wholesaler for distribution of the wine transfers the liability  
16      for payment of the liquor excise tax to the wholesaler upon the  
17      sale of the wine by the wholesaler."

18               Section 3.   Section 7-24-9 NMSA 1978 (being Laws 1989,  
19      Chapter 326, Section 2) is amended to read:

20               "7-24-9.   DEFINITIONS.--As used in the Local Liquor Excise  
21      Tax Act:

22               A.   "alcoholic beverages" means distilled or  
23      rectified spirits, potable alcohol, brandy, whiskey, rum, gin  
24      and aromatic bitters or any similar alcoholic beverage,  
25      including blended or fermented beverages, dilutions or mixtures

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1 of one or more of the foregoing containing more than one-half  
2 of one percent alcohol, but excluding medicinal bitters;

3 B. "county" means:

4 (1) a class B county having a population of  
5 more than fifty-six thousand but less than seventy-five  
6 thousand, according to the most recent federal decennial census  
7 or any subsequent decennial census, and having a net taxable  
8 value for rate-setting purposes for the 1988 or any subsequent  
9 property tax year of more than five hundred million dollars  
10 (\$500,000,000) but less than seven hundred million dollars  
11 (\$700,000,000); or

12 (2) a class A county;

13 C. "department" means the taxation and revenue  
14 department, the secretary of taxation and revenue or any  
15 employee of the department exercising authority lawfully  
16 delegated to that employee by the secretary;

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

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

23 [~~E.~~] F. "person" means any individual, estate,  
24 trust, receiver, cooperative association, club, corporation,  
25 company, firm, partnership, joint venture, syndicate or other

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1 association; "person" also means, to the extent permitted by  
2 law, any federal, state or other governmental unit or  
3 subdivision or agency, department or instrumentality thereof;

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

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

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

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

19 Section 4. Section 7-24-10 NMSA 1978 (being Laws 1989,  
20 Chapter 326, Section 3) is amended to read:

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

23 A. The majority of the members elected to the  
24 governing body of a county identified in Paragraph (1) of  
25 Subsection B of Section 7-24-9 NMSA 1978 may enact an ordinance

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1 imposing on any retailer an excise tax on the price paid by the  
2 retailer for alcoholic beverages purchased by the retailer upon  
3 which the tax imposed by this section has not been paid. The  
4 tax may be imposed at a rate not to exceed five percent,  
5 provided that any lower rate shall be an even multiple of one  
6 percent. The tax imposed under this ~~[section]~~ subsection may  
7 be referred to as the "local liquor excise tax". Any tax  
8 imposed under this ~~[section]~~ subsection shall be imposed for a  
9 period of not more than three years from the effective date of  
10 the ordinance imposing the tax. An ordinance imposing a local  
11 liquor excise tax pursuant to this subsection shall become  
12 effective only if approved by the voters in an election held  
13 pursuant to Subsection F of this section.

14 B. The majority of the members elected to the  
15 governing body of a county of a class A county may enact an  
16 ordinance to become effective only if approved by the voters in  
17 an election held pursuant to Subsection F of this section,  
18 imposing on all wholesalers distributing alcoholic beverages to  
19 retailers in that county, including tribes or tribally licensed  
20 retailers seeking a state license to purchase alcoholic  
21 beverages for resale on the tribe's land, a tax that may be  
22 referred to as a "local liquor excise tax" at a rate not to  
23 exceed:

24 (1) on spirituous liquors, ninety-nine cents  
25 (\$ .99) per liter;

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1                   (2) on beer, except as provided in Paragraph  
2 (5) of this subsection, twenty-five cents (\$.25) per gallon;

3                   (3) on wine, except as provided in Paragraphs  
4 (4) and (6) of this subsection, twenty-eight cents (\$.28) per  
5 liter;

6                   (4) on fortified wine, ninety-three cents  
7  (\$.93) per liter;

8                   (5) on beer manufactured or produced by a  
9 microbrewer, which beer is sold in this state, provided that  
10 proof is furnished to the county governing body and the  
11 department that the beer was manufactured or produced by a  
12 microbrewer, five cents (\$.05) per gallon;

13                   (6) on wine manufactured or produced by a  
14 small winegrower and sold in New Mexico, provided that proof is  
15 furnished to the county governing body and the department that  
16 the wine was manufactured or produced by a small winegrower, no  
17 local liquor excise tax may be imposed; and

18                   (7) on cider, twenty-five cents (\$.25) per  
19 gallon.

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

23                   D. Within the final year that a local liquor excise  
24 tax is in effect pursuant to either Subsection A or B of this  
25 section, the governing body may enact an ordinance to extend

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1 the term of the tax, to begin in the month following the  
2 termination of the tax currently in effect, and submit the  
3 question of the tax to the voters of the county in the same  
4 manner as required by Subsection F of this section to approve  
5 the original tax. The governing body may impose a local liquor  
6 excise tax originally imposed pursuant to Subsection A of this  
7 section for a period of up to three years or may impose a local  
8 liquor excise tax originally imposed pursuant to Subsection B  
9 of this section for a period of up to four years. The question  
10 submitted to the voters shall include the proposed term of the  
11 local liquor excise tax.

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

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1 [any] a contract using funds derived from the local liquor  
2 excise tax, it shall do so only through a selection process  
3 requiring submission of sealed bids or proposals after public  
4 notice of the opportunity to submit the sealed bids or  
5 proposals.

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

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

12 G. In a county that has:

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

17 (2) one or more incorporated municipalities  
18 that extend across the county's exterior boundaries into a  
19 second county in New Mexico, all of the voters of the  
20 incorporated municipality that extends across the county  
21 boundary shall be allowed to vote on the question of imposing a  
22 local liquor excise tax in the first county; provided that,  
23 once the first county implements a local liquor excise tax that  
24 the voters of a municipality that extends across the county  
25 boundary have approved, that local liquor excise tax shall be

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

8 H. Two counties that share a municipality that  
9 crosses the counties' common boundary may enter into a joint  
10 powers agreement to share the revenue from a local liquor  
11 excise tax imposed within the shared municipality.

12 I. The election shall be called, conducted and  
13 canvassed in substantially the same manner as provided by law  
14 for general elections.

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

25 ~~[F. Any]~~ K. An ordinance enacted under the

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

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

18           Section 5. Section 7-24-15 NMSA 1978 (being Laws 1989,  
19 Chapter 326, Section 8) is amended to read:

20           "7-24-15. [~~ADMINISTRATIVE CHARGE~~] ADMINISTRATION.--The  
21 department [~~may deduct an amount not to exceed five percent of~~  
22 ~~the proceeds of a local liquor excise tax as a charge for the~~  
23 ~~administrative costs of collection, which amount shall be~~  
24 ~~retained by the department for use in administration of] shall  
25 collect and distribute pursuant to Section 7-1-6.1 NMSA 1978 to  
  
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1 the county from which the local liquor excise tax revenue was  
2 remitted the net proceeds of the taxes imposed pursuant to the  
3 Local Liquor Excise Tax Act."

4 Section 6. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2010.

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