

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/10

SPONSOR Giannini LAST UPDATED _____ HB 250

SHORT TITLE Soft Drink, Candy and Pastry Gross Receipts SB _____

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$60,000.0	\$63,000.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to SB10, SB31, SB236, SB243 and SB247

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)
 Department of Health (DOH)
 New Mexico Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

House Bill 250 narrows the food tax deduction by excluding soft drinks, candy, chewing gum, potato chips or sticks, corn chips or pretzels, cheese puffs or curls, pork rinds, popped popcorn, and cookies, cakes, pies, donuts or other pastries from the definition of food.

The effective date of this bill's provisions is July 1, 2010.

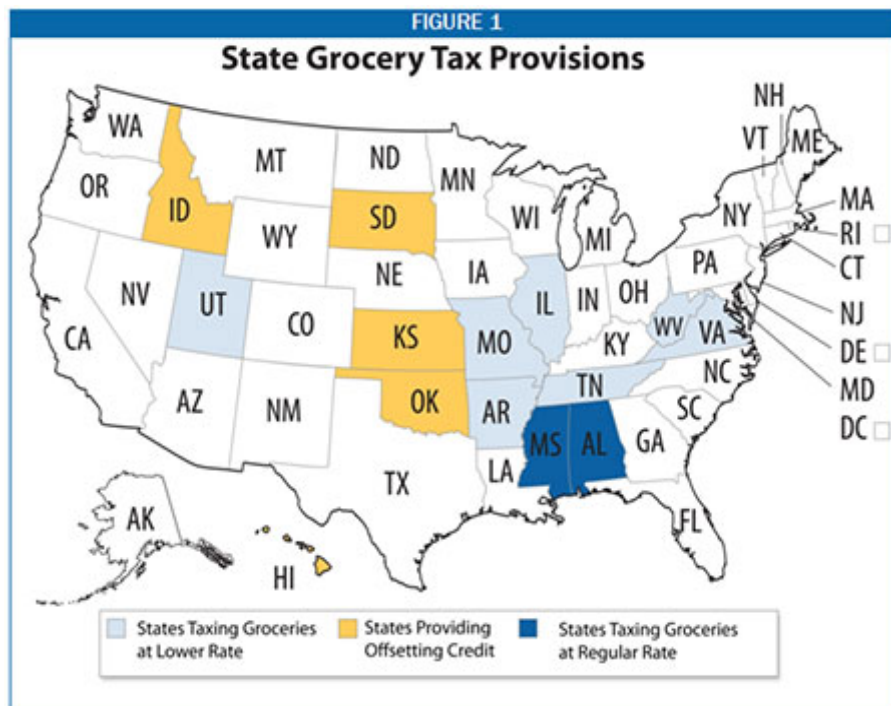
FISCAL IMPLICATIONS

According to the U.S. Census Bureau's 2008 Consumer Expenditure Survey, roughly 73 percent of all foods sold in retail stores fall under the definition of food as defined in this bill and thus would still be exempt from the gross receipts tax. In fiscal year 2009, food deductions from gross receipts were \$2.97 billion and the average tax rate on food was 7.03 percent. Assuming food deductions grow at roughly 3 percent in FY10 and an average of 5 percent in FY11 and

beyond and the tax rate remains the same, this bill would increase general fund revenue by \$60 million in FY11 and \$63 million in FY12. Since local governments are held harmless from the food deduction created in Section 7-9-92 NMSA 1978, this entire revenue increase would benefit the general fund.

SIGNIFICANT ISSUES

In 2009, 31 states and the District of Columbia exempted food for home consumption from the state tax rate. Seven other states tax food consumption at a lower rate than their state sales tax rate. Five states tax food at the state level but allow a rebate or income tax credit to compensate poor households. New Mexico both excludes food and has a low-income rebate.



Source: Center on Budget and Policy Priorities

By broadening the gross receipts tax base slightly, the bill would allow a lower tax rate to generate the same amount of revenue. This improves the economic efficiency of the tax.

It's important to note that people who receive food stamps will still be able to buy these items with their food stamps and thus would still not have to pay a gross receipts tax on these items.

TRD:

Using the food definition proposed in this bill would not allow New Mexico to participate in the Streamlined Sales Tax program.

This bill would have a significant compliance cost for retailers because they would have to differentiate between products that qualify for food stamps and products that qualify for the food deduction (they are currently the same set of products).

ADMINISTRATIVE IMPLICATIONS

TRD:

The changes proposed in this bill would require no systems changes and only minor processing changes; however, significant resources would be required for regulations to clearly define “candy”, “pastries”, “soft drinks,” and to a lesser extent “potato chips or sticks,” “corn chips or pretzels,” and “cheese puffs or curls.” Continued requests for rulings to determine if specific food products qualify for the deduction could also be expected. In addition, experience with the current deduction indicates that a high number of errors would occur in reporting, which would affect “hold harmless” distributions to local governments that can require significant resources to research and explain to local officials.

RELATIONSHIP

House Bill 250 relates to:

SB10 – changes the definition of food to be “any food or food product that is an eligible food for purposes of the special supplemental nutrition program for New Mexico women, infants and children administered by the department of health or that is fresh or frozen meat, poultry or fish with no additional ingredients or only minimal additional ingredients”

SB31 – narrows the food tax deduction by excluding food products commonly referred to as “soft drinks” from the gross receipts deduction and distributes the revenue from taxing soft drinks to the county-supported Medicaid fund

SB236 – phases out the gross receipts tax deduction for the sale of food

SB243 – imposes a sweetened beverage excise tax of \$0.005 per ounce on distributors of sweetened beverages and creates the child obesity prevention fund with revenues from the excise tax distributed to the county-supported Medicaid fund and the child obesity prevention fund, 95 percent and 5 percent respectively

SB247 – phases out distributions to municipalities and counties that are based on the gross receipts tax deduction for the sale of food

TECHNICAL ISSUES

The term “candy” should be further defined. Without a clear definition, any candy that contains an ingredient exempted from the tax (i.e. milk) may also be exempted from the tax because it contains that ingredient (ex: Twix or Cadbury crème egg).

TRD:

New Mexico’s current food deduction makes use of the federal SNAP definition of food. Many retailers nationwide already distinguish between products that qualify for SNAP and all other products. The federal government also continuously clarifies what specific items meet their definition of “food” and qualify for SNAP.

The use of any new definition of food that differs from the federal SNAP definition of food will require significant work from both the Department and taxpayers that is not currently being done. Currently the Taxation and Revenue Department plays no role in determining what products meet the definition of

food and which do not. Because the definition of food in the current food deduction piggybacks on a federal definition the State is able to save considerable resources. Even though the line between qualifying food items (for SNAP purposes) and non-qualifying items is much brighter than trying to define the items proposed in this bill, the differentiation between products for SANP is not a simple task. Both the United States Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) have an active role in deciding what items qualify and which do not. Even after decisions and actions needed for other regulatory purposes and after making determinations on generic categories of food the USDA must continually make numerous product by product determinations. When a new product determination is needed requests must be submitted in writing to a division of the USDA along with complete product packaging or a sample product. It would be a significant and totally new function for the Taxation and Revenue Department to make product determinations by itself.

From a taxpayer's point of view the situation would also be much different than what exists today. Any retailer that participates in SNAP already has all the necessary information needed on which products qualify for New Mexico's food deduction and which do not. New products must be programmed into the retail cash register systems as qualifying or not qualifying but once this is done for SNAP it is also done for New Mexico's food deduction. Any national chain or local store that uses national cash register systems or databases automatically knows what products qualify for New Mexico's food deduction. Changing the definition of food away from that used for SNAP will impact taxpayers in two ways. First, regardless of how clear the definition of deductible food items are, all cash register systems will need to accommodate a third product classification for those items that meet the SNAP definition of food but are not eligible for New Mexico's food deduction. Second, the retailers would not be able to simply turn to a national database or existing list of items but would be reliant solely on New Mexico's Taxation and Revenue Department for clarifying what does or does not qualify. In the case of restricting the food deduction to the items identified in this bill there may be a larger need for product by product determinations and from a much smaller organization with considerably fewer resources than the USDA. The USDA attempts to answer all requests for determinations within 10 business days, but it is unlikely that the Taxation and Revenue Department would be able to provide that level of service.

The Streamlined Sales Tax Project allows certain deviations from the SNAP definition of food, but does not allow the deviations used in this bill. If adopted, therefore, New Mexico would not qualify for Streamlined without repealing the changes in the bill.

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc