

**BILL ANALYSIS AND FISCAL IMPACT REPORT**  
**Taxation and Revenue Department**

**January 27, 2024**

**Bill:** HB-212

**Sponsor:** Representatives Micaela Lara Cadena, Derrick J. Lente, and Cristina Parajón

**Short Title:** Liquor Tax Rate & Fund

**Description:** This bill amends the distribution of the liquor excise tax under Section 7-1-6.40 NMSA 1978 as follows:

- New distribution to the Alcohol and Substance Use Harms Alleviation Fund in an amount equal to the net receipts attributable to the liquor excise tax, less \$2,084,000 monthly and the amount made to the Drug Court Fund.
- Changes distribution to Drug Court Fund from 5% to a flat \$250,000 monthly.
- Eliminates distribution to a municipality in a class A county (Farmington).
- Repeals the Local DWI Grand Fund and distribution.
- The remaining revenue left over after these distributions goes to the General Fund.

This bill also adds the definition of “barrel” to Section 7-17-2 NMSA 1978 and removes the definition of “fortified wine”. Section 3 of this bill makes changes to the imposition and increases rates for the liquor excise tax in Section 7-17-5 NMSA 1978 for all categories.

**Effective Date:** July 1, 2025

**Taxation and Revenue Department Analyst:** Lucinda Sydow

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
--	--	(\$240)	(\$450)	(\$670)	R	General Fund
--	--	(\$22,950)	(\$23,140)	(\$23,330)	R	Local DWI Grant Fund
--	--	(\$250)	(\$250)	(\$250)	R	Municipality – Class A County (Farmington)
--	--	\$450	\$430	\$410	R	Drug Court Fund
--	--	\$35,340	\$35,530	\$35,570	R	Alcohol Harms Alleviation Fund

\* In thousands of dollars. Parentheses ( ) indicate a revenue loss. \*\* Recurring (R) or Non-Recurring (NR).

**Methodology for Estimated Revenue Impact:** The Taxation and Revenue Department (Tax & Rev) used the liquor excise tax forecast from the Consensus Revenue Estimating Group (CREG) in December 2023 to estimate the revenue impact of the proposed tax increases and distribution changes. The liquor excise tax covers a variety of products. The bill proposes tax increases to all categories and changes the tax base from volume to price paid for alcoholic beverages sold by the wholesaler. Tax & Rev applied different demand elasticities to the products. Based on a meta-analysis study of the impact of price and tax levels on drinking and income elasticities by Wagenaar, Salois and Komro<sup>1</sup>, Tax & Rev assumes a price elasticity of -0.11 for beer, -0.19 for wine and for -0.20 for distilled spirits. Tax & Rev also assumes

<sup>1</sup> Wagenaar Alexander C., Salois, Matthew J., Komro, Kelli A. (2009). Effects of beverage alcohol price and tax levels on drinking: a meta-analysis of 1003 estimates from 112 studies. *Journal, Addiction*, 104, 179-190; doi:10.1111/j 1 360-0443.2008.02438.x

the manufacturers pass the tax on to retailers and consumers at a rate of 1.5, based on the Wagenaar, Salois and Komro study. Using 2023 third quarter data from the C2ER survey by the Council for Community and Economic Research<sup>2</sup>, Tax & Rev assumes average prices for a 6-pack of beer and a liter of wine. An average retail price for a liter of spirits was agreed upon by the economists from the CREG. Tax & Rev assumed a 23% mark-up by the retailers from the wholesaler price based on product pricing by the Pennsylvania Liquor Control Board and a competitive market<sup>3</sup>. Tax & Rev indexed the wholesaler prices to S&P's January 2024 forecasted price index for beverages and food. After the initial consumption change from the rate increases, Tax & Rev assumes an average annual volume growth by liquor product from the last 10-years, removing the growth rates from FY21 and FY22 due to changes in consumption attributable to the COVID-19 pandemic. If the purchase of liquor products for consumption moves to neighboring states or to online purchasing (see Policy Issues below), then the assumed drop in liquor purchases in state could also be higher still or the growth lower in the out years. A study by Ornstein and Levy<sup>4</sup> notes no strong evidence of substitutable products for either beer, wine or distilled spirits. Tax & Rev makes no assumption of changes in consumption patterns between liquor products.

**Section 1:** For the fiscal impact among different funds, Tax & Rev applied the new distribution percentages proposed in 7-1-6.40 NMSA 1978.

**Section 5:** This section specifies any unencumbered balance in the Local DWI Grant Fund shall be transferred to the Alcohol and Substance Use Harms Alleviation Fund. Tax & Rev defers to the Department of Finance and Administration (DFA) on what level of revenue may transfer between the two funds.

**Policy Issues:** The taxing nationwide of liquor products through an excise tax occurs at many different government levels: federal, state and local and at differing points of the supply chain: manufacturer, wholesaler and retailer. Tax rates all tend to differ based on the alcohol content of the liquor category. Like other states, New Mexico taxes spirituous liquors at a higher rate than wine and beer as then contain a higher alcohol content. Similarly, wine is taxed higher than beer. Like many other states as well, the tax is based on the volume of liquor sold not, on the value of the product. New Mexico's liquor excise tax is imposed on wholesalers and on average currently brings in \$50 million in revenue annually with half of the revenue distributed to the general fund. At the retail level, liquor sales are also subject to the Gross Receipts Tax (GRT) This bill proposes to change the taxable base from volume sold to the price paid for alcoholic beverages sold by wholesalers. This will tie revenue to the inflation rate of alcoholic prices but introduces tax imposition at a different rate on wholesalers, as their tax liability will depend on the type, quality, and price of the alcoholic beverages versus the quantity sold under the current tax base.

New Mexico's liquor excise tax rates as compared to surrounding states are displayed in Table 1 below. Under the proposed rates in the bill, for beer, spirits and wine, New Mexico would rate as having the highest excise taxes in the country for wine, remain the same for spirits and move to number 4 for beer rates.

**Table 1: State Rankings by state level liquor excise taxes <sup>1</sup>**

Liquor Category	New Mexico - Proposed Rates	New Mexico - Current Rates	Surrounding States				
			Arizona	Utah	Colorado	Oklahoma	Texas
Beer	4	14	36	13	46	15	31

<sup>2</sup> See; [www.c2er.org](http://www.c2er.org)

<sup>3</sup> [https://www.lcb.pa.gov/About-Us/News-and-Reports/Documents/2023%20Pricing%20Report\\_FINAL%20032923.pdf](https://www.lcb.pa.gov/About-Us/News-and-Reports/Documents/2023%20Pricing%20Report_FINAL%20032923.pdf)

<sup>4</sup> Ornstein, S.I., Levy, D. (1983). Price and Income Elasticities of Demand for Alcoholic Beverages. In: , et al. Genetics Behavioral Treatment Social Mediators and Prevention Current Concepts in Diagnosis. Recent Developments in Alcoholism, vol 1. Springer, Boston, MA. [https://doi.org/10.1007/978-1-4613-3617-4\\_18](https://doi.org/10.1007/978-1-4613-3617-4_18)

Spirits	24	24	43	6	47	27	46
Wine	1	5	26	*	40	29	44

Source: Tax Foundation, Tax & Rev calculations

1 Comparable state ratings based on dollars/gallon, include local rates, state-controls, differing rates by alcohol content.

\* Utah has state-controlled sales of wine<sup>5</sup>

The rate increases by each liquor product are relatively modest for the consumer but as relayed in Table 1, will place New Mexico as the highest in the nation for wine and the top 5 for beer. The increase in rates may drive some of the purchasing of products to neighboring states with lower tax rates or to online retail purchasing.

New Mexico’s tax code is out of line with most states in that more complex distributions are made through the tax code. As an alternate to this proposal and revenue earmarks, the liquor excise tax could be distributed to the general fund and alcohol abuse funding needs could be provided for through general fund appropriations in HB2. The more complex the tax code’s distributions, the costlier it is for Tax & Rev to maintain the GenTax system and the more risk is involved in programming changes.

Alcohol and substance abuse are among the costliest health problems in the United States. Studies have shown that public investment reduces alcohol and substance abuse and delays abuse initiation at young ages. In that regard, the redistribution of revenue to targeted alcohol abuse funds may impact and support community programs. This would establish a consistent future fund balance for budgeting appropriations from these funds but would permanently divert gross receipts revenue from the general fund.

An assumed social policy goal in raising liquor excise taxes is to curb alcohol consumption by increasing the cost of purchasing alcohol. Studies are mixed on the impact raising prices to reduce liquor consumption.<sup>6</sup> Part of the inclusive correlation is due to various other factors that are used to curb consumption of alcohol as it relates to health outcomes and preventing impaired driving. In empirical studies it is hard to control for other social and legal steps that are taken to curb excessive drinking and then driving. Finally, there are studies pointing to the differences in policies and the impact by gender and race.

**Technical Issues: Section 2:** Under current law, some newer alcoholic products do not clearly meet definitions under the statute, and therefore there could be disputes which rate applies to them. For example, premade alcoholic mixed drinks; alcoholic seltzers, and alcoholic mead do not cleanly fall in the current definitions. Tax & Rev suggests defining broader categories that will anticipate the fast variety of alcoholic beverages that become marketable.

**Other Issues:** Proposing fixed dollar amounts for monthly distributions may cause issues in the event liquor excise tax revenue in a given month is not sufficient to cover the fixed amounts due to amended returns or late filings. If that occurs, the general fund will need to cover the difference(s) to meet the flat amounts. That would effectively cause a negative distribution to the general fund.

Revenues to the General Fund and the Drug Court Fund are fixed amounts. These funds will not benefit in the future from the potential growth in liquor excise tax due to inflation or population growth. While a fixed distribution amount assures these funds a steady revenue for budgeting, it does not allow for any growth in revenue for future needs.

<sup>5</sup> See: [2023 State Beer Taxes: Alcohol Excise Tax Rates | \(taxfoundation.org\)](https://taxfoundation.org/2023-state-beer-taxes-alcohol-excise-tax-rates/); [Distilled Spirits Taxes by State | Liquor Taxes | Alcohol Taxes \(taxfoundation.org\)](https://taxfoundation.org/distilled-spirits-taxes-by-state-liquor-taxes/); [State Wine Taxes | Compare 2021 Wine Tax Rates | \(taxfoundation.org\)](https://taxfoundation.org/state-wine-taxes-compare-2021-wine-tax-rates/)

<sup>6</sup> Nelson, Jon P. (2013). Does Heavy Drinking by Adults respond to Higher Alcohol Prices and Taxes? A Survey and Assessment. Economic Analysis & Policy, Vol. 43 No. 3, December 2013

**Administrative & Compliance Impact:** Tax & Rev will conduct staff training, update forms, instructions, and publications. Tax & Rev will also produce communications to impacted taxpayers, including specifications of the proposed changes to tax rates. Tax & Rev’s Administrative Services Division (ASD) anticipates this bill will take approximately 120 hours between 2 full-time equivalent (FTE) staff for testing, creating new reports and establishing new revenue distributions. This will result in \$7,600 in staff workload costs. This bill will have a high impact on Tax & Rev’s Information Technology Division (ITD), approximately 750 hours or about 4 ½ months and \$165 thousand contractual costs. Tax & Rev’s Revenue Processing Division (RPD) staff will be involved with testing the new rates and working on outreach to impacted taxpayers. This will result in \$12,000 in staff workload costs.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2024	FY2025	FY2026	3 Year Total Cost		
--	\$7.6	--	\$7.6	NR	Tax & Rev – ASD operating
--	\$165.0	--	\$165.0	NR	Tax & Rev – ITD contractual
--	\$12.0	--	\$12.0	NR	Tax & Rev – RPD staff workload

\* In thousands of dollars. Parentheses ( ) indicate a cost saving. \*\* Recurring (R) or Non-Recurring (NR).

**Related Bills:** Conflicts with SB-147, HB-179 and HB-112