SENATE BILL 263

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

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AN ACT

RELATING TO LIQUOR EXCISE TAXES; AUTHORIZING COUNTIES TO IMPOSE A LOCAL LIQUOR EXCISE TAX; LIMITING RATES OF LOCAL LIQUOR EXCISE TAXES; ELIMINATING AN ADMINISTRATIVE FEE; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of the Tax Administration Act is enacted to read:

"[<u>NEW MATERIAL</u>] TRANSFER OF REVENUES FROM LOCAL LIQUOR EXCISE TAXES.--A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local liquor excise tax imposed by that county in an amount equal to the net receipts attributable to the local liquor excise tax imposed by that county."

SECTION 2. Section 7-24-9 NMSA 1978 (being Laws 1989,

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Chapter326, Section 2) is amended to read:

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

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin [~~and~~], aromatic bitters or any similar alcoholic 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, but [~~excluding~~] does not include medicinal bitters;

[~~B. "county" means a class B county having a population of more than fifty-six thousand but less than seventy-five thousand, according to the most recent federal decennial census or any subsequent decennial census, and having a net taxable value for rate-setting purposes for the 1988 or any subsequent property tax year of more than five hundred million dollars ($500,000,000) but less than seven hundred million dollars ($700,000,000);~~]

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 apples that contains not less than one-half of one percent of

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alcohol by volume and not more than seven percent of alcohol by volume;

[~~C.~~] D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

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

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

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

(3) vermouth and sherry;

[~~D.~~] F. "governing body" means the board of county commissioners of a county;

G. "microbrewer" means:

(1) for years 2014 through 2023, a person who produces less than fifteen thousand barrels of beer in a year; and

(2) for 2024 and subsequent years, a person who produces less than five thousand barrels of beer in a year;

[~~E.~~] H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

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

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

K. "small winegrower" means a winegrower who produces less than one million five hundred thousand liters of wine in a year;

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

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

N. "wholesaler" means a person holding a license issued under Section 60-6A-1 NMSA 1978 or a person selling

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alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 NMSA 1978."

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

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

A. The majority of the members elected to the governing body of a class B county having a population of more than fifty-six thousand but less than seventy-five thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for a tax year of more than five hundred million dollars ($500,000,000) but less than eight hundred million dollars ($800,000,000) may enact an ordinance, to become effective only if approved by the voters in an election held pursuant to Subsection H of this section, that imposes on any retailer an excise tax on the price paid by the retailer for alcoholic beverages purchased by the retailer upon which the tax imposed by this section has not been paid. The tax may be imposed at a rate not to exceed six percent, provided that any lower rate shall be an even multiple of one percent.

B. The majority of the members elected to the governing body of a county not described in Subsection A of this section may enact an ordinance, to become effective only if approved by the voters in an election held pursuant to Subsection H of this section, that imposes an excise tax on all wholesalers distributing alcoholic beverages to retailers doing business in that county. The excise tax shall be as follows:

(1) on spirituous liquors, not more than one dollar eight cents ($1.08) per liter;

(2) on beer, except as provided in Paragraph (5) of this subsection, not more than fifty-one cents ($.51) per gallon;

(3) on wine, except as provided in Paragraphs (4) and (7) of this subsection, not more than thirty-six cents ($.36) per liter;

(4) on fortified wine, not more than fifty-four cents ($.54) per liter;

(5) on beer manufactured or produced by a microbrewer, provided that the beer is sold in this state and that proofis furnished to the county governing body and the departmentthat the beer was manufactured or produced by a microbrewer, no local liquor excise tax shall be imposed;

(6) on cider, not more than seventy-two cents ($.72) per gallon; and

(7) on wine manufactured or produced by a small winegrower, provided that the wine is sold in this state and that proof is furnished to the county governing body and the department that the wine was manufactured or produced by a small winegrower, no local liquor excise tax shall be imposed.

C. A tax imposed pursuant to this section may be referred to as the "local liquor excise tax".

D. A tax imposed pursuant to the Local Liquor Excise Tax Act shall be imposed for a period of not more than four years from the effective date of the tax.

E. Within the final year that a local liquor excise tax is in effect pursuant to Subsection B of this section, the governing body may enact an ordinance to extend the term of the tax; provided that the ordinance shall not extend the term for more than four years. The question of the tax extension shall be submitted to the voters of the county in the same manner as required by Subsection H of this section to approve the original tax.

F. A governing body at the time of enacting an ordinance imposing [~~the~~] or extending a tax authorized in [~~Subsection A of~~] this section shall dedicate the revenue to fund [~~educational programs and~~] direct program services for the prevention and treatment, including social detoxification, of alcoholism and drug abuse within the county and for no other purpose. [~~After approval of the imposition of a local liquor excise tax by the voters but before the effective date of the ordinance~~] The governing body shall hold a public meeting for the purpose of inviting comment on and suggestions for the most appropriate programs on which to expend the revenue produced by the tax. The governing body shall invite representatives from the appropriate Indian tribes, nations and pueblos located in that county to the meeting. If the governing body awards [~~any~~] a contract using funds derived from the local liquor excise tax, it shall do so only [~~through a selection process requiring submission of sealed bids or proposals after public notice of~~]

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~~the opportunity to submit the sealed bids or proposals.~~

~~C. The governing body enacting an ordinance imposing the local liquor excise tax shall submit the question of imposing the tax to the qualified voters of the county at a regular or special election.~~

~~D. Only those voters who are registered within the county shall be permitted to vote. The election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections.~~

~~E. If at an election called pursuant to this section the majority of the voters voting on the question vote in the affirmative on the question, then the ordinance imposing the local liquor excise tax shall be approved. If at such an election the majority of the voters voting on the question fail to approve the question, then the ordinance shall be disapproved and the question required to be submitted by Subsection B of this section shall not be submitted to the voters for a period of at least one year from the date of the election.~~

~~F. Any ordinance enacted under the provisions of this section that imposes a local liquor excise tax or changes the rate of tax imposed shall include an effective date that is the first day of any month that begins no earlier than ninety days after the date of the election. A certified copy of any ordinance imposing a local liquor excise tax shall be mailed or~~

~~personally delivered to the department within five days after the ordinance is certified to have been approved by the voters.~~

~~G. Any ordinance repealing the imposition of a tax under the provisions of this section shall contain an effective date that is the first day of any month beginning no earlier than sixty days from the date the ordinance repealing the tax is adopted by the governing body. A certified copy of any ordinance repealing a local liquor excise tax shall be mailed or personally delivered to the department within five days of the date the ordinance is adopted~~] in accordance with the applicable provisions of the Procurement Code.

E. Two counties that share a municipality that extends across the counties' common boundary may enter into a joint powers agreement or other written agreement to share the revenue from a local liquor excise tax imposed within the shared municipality.

F. The ordinance imposing the tax shall not go into effect until after an election is held and a simple majority of the registered voters of the county voting on the question votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date that the ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters and voted upon as a separate question at any general or special election called for that purpose by the governing body.

The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as may be provided by law for general elections.

G. If the question of imposing the tax fails, the governing body shall not again propose the tax for a period of one year after the election.

H. An ordinance imposing a tax shall be effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the adopted ordinance is mailed or delivered to the department. The ordinance shall include that effective date."

SECTION 4. Section 7-24-15 NMSA 1978 (being Laws 1989, Chapter 326, Section 8) is amended to read:

"7-24-15. [~~ADMINISTRATIVE CHARGE~~] ADMINISTRATION.--The department [~~may deduct an amount not to exceed five percent of the proceeds of a local liquor excise tax as a charge for the administrative costs of collection, which amount shall be retained by the department for use in administration of~~] shall collect the proceeds of the taxes imposed pursuant to the Local Liquor Excise Tax Act."

SECTION 5. TEMPORARY PROVISION--ORDINANCE ENACTED PURSUANT TO PRIOR VERSION OF SECTION 7-24-10 NMSA 1978--CONTINUED EFFECT.--An ordinance enacted or amended by the governing body of a county pursuant to that version of Section 7-24-10 NMSA 1978 in effect prior to July 1, 2014 and imposing an excise tax at a rate not to exceed six percent shall continue to remain in effect for a period of not more than three years from the effective date of the ordinance or amendment.

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SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2014.