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HOUSE BILL 326

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

James Roger Madalena

AN ACT

RELATING TO LIQUOR TAXATION; CHANGING THE BASIS UPON WHICH THE LIQUOR EXCISE TAX IS IMPOSED; PROVIDING AN EXEMPTION FOR PURCHASES BY TRIBES IMPOSING SIMILAR 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, ~~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 or more alcohol by volume, but

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1 [excluding] does not include medicinal bitters;

2 [~~(1)~~] "~~spirituous liquors~~" means alcoholic  
3 beverages, ~~except fermented beverages such as wine, beer,~~  
4 ~~cider and ale;~~

5 ~~(2)~~] B. "beer" means [~~any~~] an alcoholic beverage  
6 obtained by the fermentation of any infusion or decoction of  
7 barley, malt and hops or other cereals in water and includes  
8 porter, beer, ale and stout;

9 [~~(3)~~] C. "cider" means an alcoholic beverage made  
10 from the normal alcoholic fermentation of the juice of sound,  
11 ripe apples that contains [~~not less than one-half of one~~  
12 ~~percent of alcohol by volume and~~] not more than seven percent  
13 of alcohol by volume;

14 [~~(4)~~] "~~fortified wine~~" means wine containing  
15 ~~more than fourteen percent alcohol by volume when bottled or~~  
16 ~~packaged by the manufacturer, but does not include:~~

17 ~~(a) wine that is sealed or capped by~~  
18 ~~cork closure and aged two years or more;~~

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

23 ~~(c) vermouth and sherry; and~~

24 ~~(5)~~ "wine" includes the words "fruit juices"  
25 and means alcoholic beverages, other than cider, obtained by

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1 ~~the fermentation of the natural sugar contained in fruit or~~  
2 ~~other agricultural products, with or without the addition of~~  
3 ~~sugar or other products, that do not contain less than one-~~  
4 ~~half of one percent nor more than twenty-one percent alcohol~~  
5 ~~by volume;~~

6 ~~B.-] D.~~ "department" means the taxation and revenue  
7 department, the secretary of taxation and revenue or any  
8 employee of the department exercising authority lawfully  
9 delegated to that employee by the secretary;

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

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

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

19 (3) vermouth and sherry;

20 ~~[E.-] F.~~ "microbrewer" means ~~[any]~~ a person who  
21 produces fewer than five thousand barrels of beer in a year;

22 ~~[D.-] G.~~ "person" ~~[means any individual, estate,~~  
23 ~~trust, receiver, cooperative association, club, corporation,~~  
24 ~~company, firm, partnership, joint venture, syndicate or other~~  
25 ~~association; "person" also means]~~ includes to the extent

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1 permitted by law, [~~any~~] a federal, state or other governmental  
2 unit or subdivision [~~or~~], agency, department, institution or  
3 instrumentality thereof;

4 [~~E.~~] H. "small winer or winegrower" means [~~any~~] a  
5 person who produces fewer than five hundred sixty thousand  
6 liters of wine in a year; [~~and~~]

7 I. "tribe" means an Indian nation, tribe or pueblo  
8 located wholly or partly in New Mexico;

9 [~~F.~~] J. "wholesaler" means [~~any~~] a person holding  
10 a license issued under Section 60-6A-1 NMSA 1978 or [~~any~~] a  
11 person selling alcoholic beverages that were not purchased  
12 from a person holding a license issued under Section 60-6A-1  
13 NMSA 1978; and

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

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

21 "7-17-5. IMPOSITION AND RATE OF LIQUOR EXCISE TAX. --

22 A. There is imposed on [~~any wholesaler who sells~~  
23 ~~alcoholic beverages on which the tax imposed by this section~~  
24 ~~has not been paid] the consumer an excise tax, to be referred  
25 to as the "liquor excise tax", for the privilege of~~

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1 purchasing, consuming or otherwise using alcoholic beverages  
2 at the following rates on alcoholic beverages [~~sold~~]  
3 purchased, consumed or otherwise used:

4 [A-] (1) on spirituous liquors, one dollar  
5 sixty cents (\$1.60) per liter;

6 [B-] (2) on beer, except as provided in  
7 Subsection E of this section, forty-one cents (\$.41) per  
8 gallon;

9 [C-] (3) on wine, except as provided in  
10 Subsections D and F of this section, forty-five cents (\$.45)  
11 per liter;

12 [D-] (4) on fortified wine, one dollar fifty  
13 cents (\$1.50) per liter;

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

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

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1                                   [~~6-~~] (7) on cider, forty-one cents (\$.41) per  
2 gallon.

3                                   B. The tax levied by this section is conclusively  
4 presumed to be a direct tax on the consumer but shall be  
5 precollected and remitted to the department by the wholesaler  
6 for convenience and ease of administration. The tax  
7 precollected by the wholesaler is an advance payment. Any  
8 amount of tax imposed by this section that is precollected by  
9 a wholesaler is an obligation of the wholesaler until remitted  
10 to the department and shall be considered a tax for purposes  
11 of the Tax Administration Act."

12                                   Section 3. Section 7-17-10 NMSA 1978 (being Laws 1966,  
13 Chapter 49, Section 8, as amended) is amended to read:

14                                   "7-17-10. DATE PAYMENT DUE. -- [~~The tax imposed by~~]  
15 Amounts precollected pursuant to the provisions of the Liquor  
16 Excise Tax Act [~~is~~] are to be paid on or before the twenty-  
17 fifth day of the month following the month in which the  
18 taxable event occurs."

19                                   Section 4. A new section of the Liquor Excise Tax Act,  
20 Section 7-17-11.1 NMSA 1978, is enacted to read:

21                                   "7-17-11.1. [NEW MATERIAL] TAX-- EXEMPTION-- SIMILAR  
22 IMPOSITION BY TRIBE REQUIRED. --

23                                   A. Exempt from the liquor excise tax imposed by  
24 Section 7-17-5 NMSA 1978 are purchases of alcoholic beverages  
25 that are also subject to a sales, privilege, consumption or

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1 similar tax imposed by the governing body of a tribe, if the  
2 rate of tax imposed by the government of the tribe is equal to  
3 or greater than the rate of tax imposed by Section 7-17-5 NMSA  
4 1978.

5 B. A wholesaler may deduct the quantity of  
6 alcoholic beverages purchased from him that is exempt from the  
7 tax imposed by Section 7-17-5 NMSA 1978 pursuant to Subsection  
8 A of this section from the total amount of alcoholic beverages  
9 purchased from him to calculate the tax due to the department  
10 pursuant to Section 7-17-5 NMSA 1978.

11 C. The department shall develop procedures for  
12 claiming and verifying the validity of the claim for the  
13 exemption provided by this section. "

14 Section 5. Section 7-17-12 NMSA 1978 (being Laws 1984,  
15 Chapter 85, Section 8, as amended) is amended to read:

16 "7-17-12. INTERPRETATION OF ACT--ADMINISTRATION AND  
17 ENFORCEMENT OF TAX.--

18 A. The department shall interpret the provisions  
19 of the Liquor Excise Tax Act.

20 B. The department shall administer and enforce the  
21 collection of the liquor excise tax, and the Tax  
22 Administration Act applies to the administration and  
23 enforcement of the [tax] Liquor Excise Tax Act. "

24 Section 6. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2001.

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