BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

February 21, 2025

Bill: SB-431 - Rev **Sponsor:** Senators Antoinette Sedillo Lopez and Shannon D. Pinto and Representative Joanne J. Ferrary

Short Title: Liquor Tax Changes & Programs

Description: This bill creates the liquor excise surtax beginning July 1, 2026, imposed on a retailer that sells alcoholic beverages not for resale, at a rate of 6% of the price paid for alcoholic beverages, while leaving the existing liquor excise tax on wholesalers in place. Section 7-1-6.40 NMSA 1978 is amended to distribute the revenue from the new surtax to a newly-created tribal alcohol harms alleviation fund and change the current distributions of the liquor excise tax to increase the distribution to the drug court fund, create a new distribution to a new local alcohol harms alleviation fund and eliminate distributions to the local DWI grant fund, the city of Farmington, and the General Fund. The bill adds definitions to the Liquor Excise Tax Act and excludes the liquor excise surtax from the definition of gross receipts for gross receipts tax purposes.

Effective Date: July 1, 2025

Taxation and Revenue Department Analyst: Lucinda Sydow and Pedro Clavijo

Appropriation*		R or NR**	Fund(s) Affected
FY2025	FY2026		
--	$300	R	Section 15: Interlock Device Fund
--	($300)	R	Section 15: Local Alcohol Harms Alleviation Fund
--	$2,000	R	Section 23: Indian Affairs Department
--	$1,000	R	Section 23: Board of Regents - University of New Mexico

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

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
--	$22,480	$24,750	$24,990	$25,260	R	Section 1 & 21: Liquor Excise Tax – Local DWI Grant Fund/Local Alcohol Harms Alleviation Fund
--	($249)	($249)	($249)	($249)	R	Section 1: Liquor Excise Tax – Farmington
--	$500	$510	$510	$520	R	Section 1: Liquor Excise Tax – Drug Court Fund
--	($24,730)	($25,010)	($25,260)	($25,520)	R	Section 1: Liquor Excise Tax – General Fund
--	$46,000	$46,500	$47,000	$47,500	R	Section 4: Liquor Excise Surtax – Tribal Alcohol Harms Alleviation Fund

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

Methodology for Estimated Revenue Impact: [Section 1] The Taxation and Revenue Department (Tax & Rev) applied the proposed distribution rates for the current liquor excise tax to the current Consensus Revenue Estimating Group's (CREG) December 2024 liquor excise forecast. The proposal eliminates the distributions to the General Fund, and to Farmington and increases the allocation to the Drug Court Fund from 5% to 6% and adds a distribution of 94% to the new Local Alcohol Harms Alleviation Fund, which under Section 21 is synonymous with the current Local DWI Grant Fund which has a current distribution of 45% of liquor excise tax.

[Section 4:] In addition to continuing to tax wholesale liquor sales under the liquor excise tax, the bill taxes retail liquor sales. Tax & Rev used the RP80 Gross Receipts Tax (GRT) report and retrieved taxable gross receipts by NAICS codes to identify the associated tax base with selling alcoholic beverages. Gross receipts from drinking places, restaurants, supermarkets, convenience stores, and other retailers were used to estimate the alcohol sale tax base. For restaurants, supermarkets, and convenience stores, it was assumed only 15% of their taxable gross receipts account for alcoholic beverages rather than food.[1] Furthermore, an average tax elasticity of demand for liquor at the retail level of -0.16 was employed. Although elasticities differ by beverage type, this value was chosen as an average value consistent with prior reviews[2]. The analysis did not consider interactions with the tax at the wholesale level. There may be secondary impacts from the new surtax and the elasticity of demand that could reduce the volume of liquor at the wholesale level possibly reducing the revenue from the current liquor excise tax. Finally, the fiscal impact was grown using the Liquor Tax forecast from the Consensus Revenue Estimating Group (CREG) in December 2024. After modeling the fiscal impact, Tax & Rev simulated the distribution of the liquor excise surtax collections to the newly created Tribal Alcohol Harms Alleviation Fund.

A factor that may increase or reduce the fiscal impact is the pass-through of taxes to retail prices, which may vary considerably across liquor products depending on the profit maximization strategy of the liquor-selling companies, primarily driven by market concentration and tax structure. When the industry overpasses a given tax increase to price (i.e., increases the price more than would be indicated by the rise in tax), liquor demand might decrease by a larger amount than it would under a 1:1 pass-through scenario. In contrast, when the industry absorbs part of a given tax increase, liquor demand decreases by a smaller amount than in a 1:1 scenario. Thus, the extent of the pass-through may impact tax collections. Also, the income elasticity of demand can differ depending on the type of liquor. Affluent individuals may be less sensitive to price changes, leading to more inelastic demand. Social norms around alcohol consumption can also influence the elasticity of demand.

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 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 they contain a higher alcohol content. Similarly, wine is taxed at a higher rate than beer. And as in many other states, the current excise tax is based on the volume of liquor sold not on the wholesale or retail value of the product. New Mexico's Liquor Excise Tax is imposed on wholesalers and on average brings in $50 million in revenue annually with half of the revenue currently distributed to the General Fund. At the retail level, liquor sales are also subject to the Gross Receipts Tax (GRT). This bill proposes to add an additional "liquor excise surtax", on retailers as a percentage on the price paid for alcoholic beverages sold by the retailers. This will tie revenue to the inflation rate of alcoholic prices as their tax liability will depend on the type, quality, and price of the alcoholic beverages versus the quantity sold under the current

[1] Resource Library | National Restaurant Association

[2] 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

tax base, but introduces duplicative and inefficient tax imposition and administration on both retailers and wholesalers. The surtax on retailers will be in addition to the gross receipts taxes that are currently imposed on receipts from the sale of alcohol by retailers. Liquor retailers will still file and pay GRT on sales of other items, including food.

The addition of the liquor excise surtax on retailers will expand the number of returns being processed by Tax & Rev on a monthly basis. Based on licensing data from Regulation and Licensing Department (RLD), Tax & Rev estimates that the retail alcohol seller taxpayer base will be approximately 3,651 and represent about 43,800new tax returns per year that the taxpayers will file and Tax & Rev will process, distribute, audit, and when necessary collect. Tables 1 and 2 below present the breakdown of retailers by license type and tax incidence.

Table 1: Liquor Licenses by Type and Retail sales authority		
LICENSE NO.	LICENSE TYPE	Licenses with the ability to sell at retail
Alcoholic Beverage Delivery Permit Count	6	
Bed and Breakfast Count	4	4
Club Count	129	129
Common Carrier Count	245	
Craft Distiller Count	40	40
Craft Distiller Off-Site Count	19	19
Direct Wine Shipment Permit Count	1,109	1,109
Dispenser Count	1,310	1,310
Governmental Count	80	
Limited Beer Wholesaler Count	4	
Limited Wine Wholesaler Count	1	
Manufacturer (Rectifier) Count	3	
Non-Resident Count	909	
Public Service Count	14	
Restaurant A Count	516	516
Restaurant B Count	124	124
Retailer Count	71	71
Rural Dispenser Count	19	19
Rural Retailer Count	4	4
Small Brewer Count	108	108
Small Brewer Off-Site Count	55	55
Special Dispenser Permit Count	14	14
Third Party Delivery Count	3	
Wholesaler Count	61	
Wine Wholesaler (60-6A-29) Count	23	
Winegrower Count	92	92
Winegrower Off-Site Count	37	37
	5,000	3,651

This additional surtax and associated new returns/taxpayer filing obligation represents three tax programs that tax will apply to the sale of liquor: liquor excise tax on wholesalers, GRT, and liquor excise surtax on liquor retailers. The three taxes do not have the same taxpayer base though, as summarized in Table 2 below.

Table 2: Liquor taxes Taxpayers

	Liquor Tax at Distributor	Liquor Tax at Retailer
# Taxpayers	1,220	3,651
# Returns due per year	20,052	43,812

The addition of another tax on liquor sales increases the administrative burden and complexity for these taxpayers. It also increases Tax & Rev's administrative responsibilities for return processing, revenue distribution and audit and compliance. This additional burden and complexity goes against the tax policy principle of simplicity. The more complicated the tax code, the higher cost everyone must bear to ensure compliance.

The three layers of taxation also obscure the tax incidence on alcohol when comparing to other states' taxation based on a rate of tax on a gallon of alcohol. Table 3 below compares New Mexico to neighboring states based on the current wholesale excise tax only (it does not include GRT). Except for spirits, New Mexico is towards the top of states when comparing rates on beer and wine. This new surtax will likely place New Mexico as one of the highest taxing states, but a comparable calculation has not been performed by Tax & Rev due to the complexity of this new tax on the variety of consumer alcohol products.

Table 3: State Rankings by state level liquor excise taxes [3]

Liquor Category	New Mexico - Proposed Rates	New Mexico - Current Rates	Surrounding States				
			Arizona	Utah	Colorado	Oklahoma	Texas
Beer [1]	?	14	36	13	46	15	31
Spirits [1]	?	24	43	6	47	27	46
Wine [2]	?	5	26	*	40	29	44

Source: Tax Foundation, Tax & Rev calculations

Notes: 1. As of January 1, 2024; 2. As of January 1, 2021; 3. Comparable state ratings based on dollars per gallon, include local rates, state-controls, differing rates by alcohol content.

* Utah is one of five states where the government controls sales of wine.

New Mexico's tax code is also out of line with most states in that more complex revenue distributions are made to specific funds and to local governments through the tax code. As an alternate to this proposal and revenue earmarks, the liquor excise tax and new surtax 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 are, the costlier it is for Tax & Rev to maintain the GenTax system and the more risk is involved in programming changes. This proposal also would eliminate a recurring General Fund revenue source, reducing the legislature's budgetary flexibility with respect to the broad appropriation needs of the State in future years. In FY24, liquor excise tax contributed $24 million to the General Fund, or approximately 0.2% of recurring General Fund revenue.

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.

While liquor demand is generally inelastic, meaning that a price increase due to taxes will result in a relatively small decrease in the quantity of liquor demanded by consumers, raising taxes can still generate significant revenue for governments while potentially reducing overall alcohol consumption. Increasing excise taxation of alcoholic beverages is considered optimal in alcohol control policy as increasing taxation has proven to be an effective and cost-efficient method for reducing social and health alcohol-related harms. In addition to lowering attributable harm, there are economic reasons for implementing excise taxation on alcohol. These reasons include generating revenue and paying for negative externalities associated with alcohol consumption. Many studies have found that increases in alcohol taxation are related to reductions in alcohol consumption, even after accounting for the extent to which the tax increase is passed on to the consumer through the retail price.

However, the impact of tax changes on tax revenue has different nuances. On the one hand, a higher effective tax structure might not only reduce alcohol consumption but also increase revenue. Yet, on the other hand, it may be argued that tax increases not only increase prices and reduce consumption but also could result in decreased tax revenue as well as increased unrecorded alcohol consumption.

It is unknown what implications the proposed 6% liquor surtax will have on liquor retailers and their point of sale systems. Retailer point of sale systems must be programmed to automate the calculation and billing of tax on customer receipts. A restaurant would be required under this proposal to impose the combined state and local GRT rate on the entire food and beverage amount, to impose a 6% surtax on only the alcohol sales.

Technical Issues: [Section 3]: "Retailer" is defined in Section 60-3A-3(W) NMSA 1978, and the definition of retailer there does not match the proposed definition of "retailer" in this bill. Tax & Rev suggests that, to avoid ambiguity or confusion, the bill should adopt the definition of "retailer" from the Liquor Control Act as follows: "'retailer' means a person holding a license issued under Section 60-6A-2 NMSA 1978 or a person holding a craft distiller's license under Section 60-6A-6.1 NMSA 1978."

Other Issues: Currently, NMSA 7-1-82 A(1) NMSA 1978 requires liquor licensees to be compliant with gross receipts tax and liquor excise tax to renew licenses annually. This section should be updated to include the liquor excise surtax as well to ensure retailers are in compliance with the new surtax before renewing licenses with Alcoholic Beverage Control Division of RLD.

Administrative & Compliance Impact: As detailed below, this bill is expected to impose a roughly $3.5 million implementation cost and $725 thousand in recurring costs on Tax & Rev. No funding source is currently identified to pay for those costs. Tax & Rev requested a non-recurring special appropriation for bill implementation that was included in the Executive budget recommendation but was not included in the LFC recommendation.

This bill proposes the implementation of a new tax. Tax & Rev will create and publish new forms and publications, make changes to information systems, and create new regulations. Tax & Rev will test system changes and train employees on the administration of the proposed tax.

Although every liquor retailer should already have a GRT account with Tax & Rev, each of the estimated 3,651 liquor retailers will need to create a liquor excise surtax account with Tax & Rev and begin filing and paying the new 6% surtax monthly. Tax & Rev will need to process each business registration, respond to taxpayer inquiries, perform audits, and collect on delinquent balances. Tax & Rev will produce communications to impacted taxpayers, including specifications of the proposed changes to tax rates. It is anticipated compliance with the tax will at least temporarily decline as all alcohol retailers statewide become aware and learn how to comply correctly.

Tax & Rev estimates that there are 1,220 active wholesaler liquor excise tax filers currently. The number of liquor retailers is about three times larger at approximately 3,650. Given that the definition of "retailer" in the bill is unclear (see Technical Issues), this number could increase and will require a significant outreach and education effort. Registration of approximately 3,650 licensees would be a heavy lift upfront and subsequent compliance activities would necessitate more staff for Tax & Rev's Audit and Compliance Division (ACD). ACD will require approximately two pay band 60 FTE at $150,000 per fiscal year to support the compliance of a new surtax program.

This bill will have a high impact on Tax & Rev's Revenue Processing Division's (RPD), Special Tax Program business unit. RPD will be involved with the testing of new returns in GenTax, the tax system of record, and its interface, Taxpayer Access Point (TAP), new taxpayer communications and financial statements. RPD will require one pay band 60 FTE at $75,000 per fiscal year to support the administration of a new tax program with the business unit.

Tax & Rev's Administrative Services Division (ASD) anticipates this bill will take approximately 100 hours between 2 FTE staff, at a pay-band 70 and 80, for testing, creating new reports and establishing new revenue distributions. This will result in $6,300 in staff workload costs. Pay-band 70 hours are estimated at time and ½ due to extra hours worked.

The implementation of this bill will result in a significant impact on Tax & Rev's Information Technology Division (ITD), requiring approximately 9-12 months and incurring contractual costs of approximately $3,487,535. This cost breakdown includes $3,210,313 for contractual resources and an additional $277,222 for staff workload costs. Considering the nature and complexity of the effort needed to implement the proposed changes, a contract with the GenTax vendor, FAST Enterprises, LLC, is necessary. In addition to the contract with FAST, there will be a need for a full-time contract project manager and Independent Verification and Validation (IV&V) contract services would also be necessary. The staff workload costs require one state development resource and one state business analyst for the project's duration. After implementation is complete, one application developer, one business analyst and one database/system administrator FTE will be needed for ongoing operations and support.

The addition of a new tax program necessitates collaboration between ACD, ASD, ITD, RPD and the Tax Information and Policy Office. This collaboration is required for the creation of forms and instructions, as well as the implementation of the new tax program. RPD estimates that implementing this bill will cost $31,000 in staff workload.

Considering the complexity and effort required to implement this bill, the effective date of July 1, 2025, is not feasible. Tax & Rev proposes an effective date of July 1, 2026.

Estimated Additional Operating Budget Impact*				**R or NR****	**Fund(s) or Agency Affected**
FY2025	**FY2026**	**FY2027**	**3 Year Total Cost**		
--	$150	$150	$300	R	ACD - FTE
--	$75	$75	$150	R	RPD - FTE
$31.0	--	--	$31.0	NR	RPD – Staff workload & Operating
--	$6.3	--	$6.3	NR	ASD – Staff workload
$802.6	$2,407.7	--	$3,210.3	NR	ITD – Contractual Costs
$69.3	$207.9	--	$277.2	NR	ITD – Staff workload

--	--	$277.2-	$277.2	R	ITD - FTE

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

Related Bills: Duplicate of HB-417, Similar to HB-213 (2024 Legislative Session)