F I S C A L   I M P A C T   R E P O R T

ORIGINAL DATE 2/4/08
SPONSOR Ortiz y Pino **LAST UPDATED** **HB**

SHORT TITLE Soft Drink Sale Gross Receipts **SB** 431

ANALYST Schardin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	5,735.8	5,879.2	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates HB619, Relates to HB238, Conflicts with SB162

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Health Policy Commission (HPC)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 431 amends Section 7-9-92 NMSA 1978 to remove “soft drinks” from the list of foods eligible to receive a gross receipts tax deduction for retail food that was enacted in 2004. Soft drinks are defined as nonalcoholic flavored beverages commonly referred to as soft drinks that contain a sweetener additive or are made from powder, syrup concentrate or other base product.

The effective date of this provision will be July 1, 2008.

FISCAL IMPLICATIONS

According to TRD, the Beverage Marketing Corporation cites that in 2005, the average American consumed 54.3 gallons of beverages commonly referred to as soft drinks per year (carbonated beverages, not including fruit beverages or sport drinks). With a 2005 population of 1.8 million, this assumes that New Mexicans consumed about 97.8 million gallons of soft drinks per year in 2005. TRD assumes that soft drink consumption per person has remained flat but that New Mexico's population grows about 2.5 percent per year. Growing that figure for population growth yields an estimated 108 million gallons consumed in FY09. About 77 percent (83.1 million gallons) of soft drink products are packaged and likely to be sold in retail food stores, but only about half of those 83.1 million gallons (41.6 million gallons) are sold in stores that qualify for the gross receipts tax deduction created in Section 7-9-92 NMSA 1978. Assuming each gallon of soft drink costs $2, the bill excludes about $83.1 million of receipts from the food tax deduction. Taxed at a statewide rate of 6.9 percent, the bill would increase general fund revenue by about $5.7 million in FY09 (108 million gallons X 77% packaged X 50% sold at food stores X $2 per gallon X 6.9% tax). 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

The bill discourages consumption of soft drinks by increasing their price relative to other beverages. A 12 ounce can of soda contains 10 teaspoons of sugar. According to DOH, US consumption of sweetened beverages has doubled in adults and tripled in adolescents since the 1970s. Since the same time, milk consumption has declined by 30 percent.

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

PERFORMANCE IMPLICATIONS

DOH reports that the bill relates to Task 3.2 of the governor's performance and accountability plan, which is to reduce the prevalence of obesity and diabetes.

ADMINISTRATIVE IMPLICATIONS

TRD reports that implementing the food and medical deductions has been unusually complicated and expensive due to programming necessary to distribute hold-harmless payments to local governments. Currently, the definition of food items eligible for the food deduction is the same as the definition for the federal Food Stamps program. Changing the definition will cause administrative problems to grow.

Retail food stores will also experience administrative impacts. Food stores will need to reprogram their systems to include receipts from soft drink sales in the taxable portion of sales.

CONFLICT, DUPLICATION, RELATIONSHIP

Senate Bill 431 duplicates House Bill 619.

Senate Bill 431 conflicts with Senate Bill 162, which amends the same section to expand the definition of retail stores to include establishments with over 75 percent of sales attributable to sales of bottled water, ice, and coffee.

Senate Bill 431 relates to HB238, which would impose a new soft drink tax on soft drink sales and distribute most of the revenue generated to a newly-created soft drink dialysis fund for dialysis equipment and training.

TECHNICAL ISSUES

TRD notes the definition of a soft drink should be improved. The phrase "commonly referred to as a soft drink" is troublesome because it could be construed to include any drink that does not contain alcohol. Also, it is unclear whether some juices, energy drinks, fruit-flavored drinks, sports drinks, flavored water, bottled teas and coffees that contain a sweetener would be taxable under the proposal. The bill could be amended to stipulate that a soft drink "contains artificial carbonation" could eliminate much of this ambiguity.

SS/mt