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January 26, 2018

## **HAND-DELIVERED**

Senator Cliff Pirtle  
New Mexico State Capitol  
Office 414B

Dear Senator Pirtle,

I am writing to share with you some serious concerns about Senate Bill 129, which you are sponsoring and which would reimpose the gross receipts tax on all food other than meat, flour tortillas, and items covered by the federal WIC program.

A major misperception is that WIC-eligible foods include all healthy or nutritious foods, and that therefor taxing non-WIC foods would only tax unhealthy food items. In fact, because WIC is designed for the very specific purpose of addressing malnutrition in pregnant women, breastfeeding women, infants, and children under the age of five, it excludes many healthy foods. Nuts, for example, are highly nutritious but are excluded because infants are likely to choke on nuts. It would make no sense to tax such a healthy food for older children and adults.

The many common food items that are excluded from WIC include:

- Nuts and nut products, with the one exception of peanut butter;
- Dried fruit;
- Hard corn taco shells;
- Goat cheese;
- Shredded cheese of any kind;
- Seeds, like sunflower seeds, and seed products, like canola oil;
- Pickles and olives;
- Chile powder; and
- Canned soup.

Many of these food items are produced locally, and taxing their products would cut into those farmers' already tight profit margins (think of New Mexico's pecan growers and chile farmers).

Another fundamental problem with using the WIC program definitions to determine which foods are exempt from taxation is that those definitions are extremely complex. As you can see from the enclosed WIC food shopping guide, even when a food is theoretically WIC eligible, only specific brands and specific sizes of foods are included.

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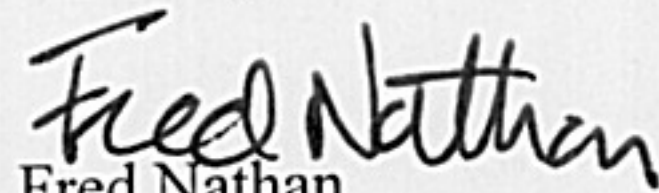
In addition, that WIC-approved list is constantly changing, which would place a very heavy burden on local grocers to keep up with a constantly changing list of items to exempt from tax.

Imagine a New Mexico family on a tight budget attempting to determine which items in their shopping cart will be taxed. Of the ingredients in a peanut butter and jelly sandwich, the peanut butter would *not* be taxed (unless it was a different size than 16-18 ounces, or organic, or reduced fat), the jelly *would* be taxed, and the bread would *not* be taxed if it were whole wheat of an approved brand and size, but *would* be taxed if it were white bread or wheat bread of a non-approved brand or size.

During the 2010 legislative session, former Senator Bernadette Sanchez introduced Senate Bill 10, which would have taxed the sale of food other than meat and WIC items. The bill was labeled the "tortilla tax" because white flour tortillas are not WIC-eligible items. (We note that you have specifically included flour tortillas in your bill, which highlights the problems with the WIC definition.) Senator Sanchez's received enormous public backlash and her bill ultimately did not pass. I believe that she would tell you she regretted ever sponsoring the legislation.

We hope that you will reconsider introducing legislation to reimpose the food tax on all foods other than meat, flour tortillas, and WIC-eligible items, and we would be happy to discuss this issue further with you if you are interested.

Sincerely,

A handwritten signature in black ink that reads "Fred Nathan". The signature is written in a cursive, slightly stylized font.

Fred Nathan  
Executive Director