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SENATE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; INCREASING THE CIGARETTE TAX RATES;  
INCREASING THE TOBACCO PRODUCTS TAX RATE; INCLUDING E-  
CIGARETTES IN THE DEFINITION OF "TOBACCO PRODUCTS" IN THE  
TOBACCO PRODUCTS TAX ACT; DISTRIBUTING THE NEW REVENUE FROM THE  
INCREASES IN THE CIGARETTE TAX AND THE TOBACCO PRODUCTS TAX TO  
THE PUBLIC SCHOOL FUND FOR THE STATE EQUALIZATION GUARANTEE  
DISTRIBUTION; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 7-1-6.11 NMSA 1978 (being Laws 1983,  
Chapter 211, Section 16, as amended by Laws 2017, Chapter 34,  
Section 2 and by Laws 2017, Chapter 63, Section 9) is amended  
to read:

"7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA

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1 1978 shall be made to the comprehensive cancer center at the  
2 university of New Mexico health sciences center in an amount  
3 equal to [~~eighty-three~~] forty-six hundredths percent of the net  
4 receipts, exclusive of penalties and interest, attributable to  
5 the cigarette tax.

6 B. A distribution pursuant to Section 7-1-6.1 NMSA  
7 1978 in an amount equal to [~~eight and eighty-nine~~] four and  
8 eighty-three hundredths percent of the net receipts, exclusive  
9 of penalties and interest, attributable to the cigarette tax,  
10 shall be made, on behalf of and for the benefit of the  
11 university of New Mexico health sciences center, to the New  
12 Mexico finance authority.

13 C. A distribution pursuant to Section 7-1-6.1 NMSA  
14 1978 in an amount equal to [~~three and seventy-four~~] two and  
15 four-hundredths percent of the net receipts, exclusive of  
16 penalties and interest, attributable to the cigarette tax shall  
17 be made to the New Mexico finance authority for land  
18 acquisition and the planning, designing, construction and  
19 equipping of department of health facilities or improvements to  
20 such facilities.

21 D. A distribution pursuant to Section 7-1-6.1 NMSA  
22 1978 in an amount equal to [~~nine and seventy-seven hundredths~~]  
23 five and three-tenths percent of the net receipts, exclusive of  
24 penalties and interest, attributable to the cigarette tax shall  
25 be made to the New Mexico finance authority for deposit in the

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1 credit enhancement account created in the authority.

2 E. A distribution pursuant to Section 7-1-6.1 NMSA  
3 1978 in an amount equal to [~~sixty-two~~] thirty-five hundredths  
4 percent of the net receipts, exclusive of penalties and  
5 interest, attributable to the cigarette tax shall be made, on  
6 behalf of and for the benefit of the rural county cancer  
7 treatment fund, to the New Mexico finance authority.

8 F. A distribution pursuant to Section 7-1-6.1 NMSA  
9 1978 in an amount equal to forty-five and fifty-six hundredths  
10 percent of the net receipts, exclusive of penalties and  
11 interest, attributable to the cigarette tax shall be made to  
12 the public school fund for the state equalization guarantee  
13 distribution."

14 SECTION 2. A new section of the Tax Administration Act is  
15 enacted to read:

16 "[NEW MATERIAL] DISTRIBUTION--TOBACCO PRODUCTS TAX TO THE  
17 PUBLIC SCHOOL FUND FOR THE STATE EQUALIZATION GUARANTEE  
18 DISTRIBUTION.--A distribution pursuant to Section 7-1-6.1 NMSA  
19 1978 in an amount equal to sixty percent of the net receipts,  
20 exclusive of penalties and interest, attributable to the  
21 tobacco products tax shall be made to the public school fund  
22 for the state equalization guarantee distribution."

23 SECTION 3. Section 7-12-2 NMSA 1978 (being Laws 1971,  
24 Chapter 77, Section 2, as amended) is amended to read:

25 "7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

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underscoring material = new  
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1                   A. "cigarette" means:

2                   (1) any roll of tobacco or any substitute for  
3 tobacco wrapped in paper or in any substance not containing  
4 tobacco;

5                   (2) any roll of tobacco that is wrapped in any  
6 substance containing tobacco, other than one hundred percent  
7 natural leaf tobacco, which, because of its appearance, the  
8 type of tobacco used in the filler, its packaging and labeling,  
9 or its marketing and advertising, is likely to be offered to,  
10 or purchased by, consumers as a cigarette, as described in  
11 Paragraph (1) of this subsection;

12                   (3) bidis and kreteks; or

13                   (4) any other roll of tobacco that is defined  
14 as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

15                   B. "close of business" means that time when a  
16 business ceases to operate for the remainder of the day or  
17 12:00 a.m., if the business is open and conducting business at  
18 12:00 a.m.;

19                   C. "contraband cigarettes" means cigarette packages  
20 with counterfeit stamps, counterfeit cigarettes, cigarettes  
21 that have false or fraudulent manufacturing labels, cigarettes  
22 not sold in packages of five, ten, twenty or twenty-five,  
23 cigarette packages without the tax, tax-credit or tax-exempt  
24 stamps required by the Cigarette Tax Act and cigarettes  
25 produced by a manufacturer or in a brand family not included in

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1 the directory;

2 D. "department" means the taxation and revenue  
3 department, the secretary of taxation and revenue or any  
4 employee of the department exercising authority lawfully  
5 delegated to that employee;

6 E. "directory" means a listing of tobacco product  
7 manufacturers and brand families that is developed, maintained  
8 and published by the attorney general under the Tobacco Escrow  
9 Fund Act;

10 F. "distributor" means a person licensed pursuant  
11 to the Cigarette Tax Act to sell or distribute cigarettes in  
12 New Mexico. "Distributor" does not include:

13 (1) a retailer;

14 (2) a cigarette manufacturer, export warehouse  
15 proprietor or importer with a valid permit pursuant to 26  
16 U.S.C. 5713, if that person sells cigarettes in New Mexico only  
17 to distributors that hold valid licenses under the laws of a  
18 state or sells to an export warehouse proprietor or to another  
19 manufacturer; or

20 (3) a common or contract carrier transporting  
21 cigarettes pursuant to a bill of lading or freight bill, or a  
22 person who ships cigarettes through the state by a common or  
23 contract carrier pursuant to a bill of lading or freight bill;

24 G. "license" means a license granted pursuant to  
25 the Cigarette Tax Act that authorizes the holder to conduct

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1 business as a manufacturer or distributor of cigarettes;

2 H. "manufacturer" means a person that manufactures,  
3 fabricates, assembles, processes or labels a cigarette or that  
4 imports from outside the United States, directly or indirectly,  
5 a finished cigarette for sale or distribution in the United  
6 States;

7 I. "master settlement agreement" means the  
8 settlement agreement and related documents entered into on  
9 November 23, 1998 by the state and leading United States  
10 tobacco product manufacturers;

11 J. "package" means an individual pack, box or other  
12 container; "package" does not include a container that itself  
13 contains other containers, such as a carton of cigarettes;

14 K. "qualifying tribal cigarette tax" means an  
15 excise, privilege or similar tax at a minimum rate of:

16 (1) [~~three and seventy-five hundredths cents~~  
17  ~~(\$.0375)~~] eleven and one-fourth cents (\$.1125) per cigarette if  
18 the cigarettes are packaged in lots of twenty or twenty-five;

19 (2) [~~seven and one-half cents (\$.075)~~] twenty-  
20 two and one-half cents (\$.225) per cigarette if the cigarettes  
21 are packaged in lots of ten; or

22 (3) [~~fifteen cents (\$.15)~~] forty-five cents  
23  (\$.45) per cigarette if the cigarettes are packaged in lots of  
24 five;

25 L. "retailer" means a person, whether located

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1 within or outside of New Mexico, that sells cigarettes at  
2 retail to a consumer in New Mexico and the sale is not for  
3 resale;

4 M. "stamp" means an adhesive label issued and  
5 authorized by the department to be affixed to cigarette  
6 packages for excise tax purposes and upon which is printed a  
7 serial number and the words "State of New Mexico" and "tobacco  
8 tax";

9 N. "tax stamp" means a stamp that has a specific  
10 cigarette tax value pursuant to the Cigarette Tax Act;

11 O. "tax-credit stamp" means a stamp that indicates  
12 the cigarette package bearing the stamp is to be or has been  
13 sold by a retailer located on land of a tribe that has imposed  
14 a qualifying tribal cigarette tax;

15 P. "tax-exempt stamp" means a stamp that indicates  
16 a tax-exempt status pursuant to the Cigarette Tax Act;

17 Q. "tribal member" means a person who is recognized  
18 by the governing body of an Indian tribe to be an enrolled  
19 member of that Indian tribe;

20 R. "tribe" means a federally recognized Indian  
21 nation, tribe or pueblo located wholly or partially in New  
22 Mexico, including:

23 (1) a political subdivision, agency or  
24 department of a tribe;

25 (2) an incorporated or unincorporated

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1 enterprise of a tribe, one or more tribes or a political  
2 subdivision of a tribe; or

3 (3) a corporation considered to be an Indian  
4 or a tribe by the federal government or the state; and

5 S. "tribe's land" means the reservation, pueblo  
6 grant or trust land of a tribe and property held by the United  
7 States in trust jointly for the nineteen New Mexico Indian  
8 pueblos pursuant to Public Law 95-232."

9 SECTION 4. Section 7-12-3 NMSA 1978 (being Laws 1971,  
10 Chapter 77, Section 3, as amended) is amended to read:

11 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

12 A. For the privilege of selling, giving or  
13 consuming cigarettes in New Mexico, there is levied an excise  
14 tax at the following rates for each cigarette sold, given or  
15 consumed in this state:

16 (1) [~~eight and three-tenths cents (\$.083)~~]  
17 fifteen and eight-tenths cents (\$.158) if the cigarettes are  
18 packaged in lots of twenty or twenty-five;

19 (2) [~~sixteen and six-tenths cents (\$.166)~~]  
20 thirty-one and six-tenths cents (\$.316) if the cigarettes are  
21 packaged in lots of ten; or

22 (3) [~~thirty-three and two-tenths cents~~  
23  ~~(\$.332)~~] sixty-three and two-tenths cents (\$.632) if the  
24 cigarettes are packaged in lots of five.

25 B. The tax imposed by this section shall be

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1 referred to as the "cigarette tax"."

2 SECTION 5. Section 7-12A-2 NMSA 1978 (being Laws 1986,  
3 Chapter 112, Section 3, as amended) is amended to read:

4 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products  
5 Tax Act:

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

10 B. "distribute" means to sell or to give;

11 C. "e-cigarette":

12 (1) means any electronic oral device that can  
13 be used to provide a vapor or aerosol of nicotine or any other  
14 substance to the person inhaling from the device; and

15 (2) includes any such device, or any part  
16 thereof, whether manufactured, distributed, marketed or sold as  
17 an e-cigarette, e-cigar, e-pipe or any other product name or  
18 descriptor;

19 [~~G-~~] D. "engaging in business" means carrying on or  
20 causing to be carried on any activity with the purpose of  
21 direct or indirect benefit;

22 [~~D-~~] E. "first purchaser" means a person engaging  
23 in business in New Mexico [~~who~~] that manufactures tobacco  
24 products or [~~who~~] that purchases or receives on consignment  
25 tobacco products from any person outside of New Mexico, which

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1 tobacco products are to be distributed in New Mexico in the  
2 ordinary course of business;

3 [E-] F. "person" means any individual, estate,  
4 trust, receiver, cooperative association, club, corporation,  
5 company, firm, partnership, joint venture, syndicate, limited  
6 liability company, limited liability partnership, other  
7 association or gas, water or electric utility owned or operated  
8 by a county or municipality or other entity of the state;  
9 "person" also means, to the extent permitted by law, a federal,  
10 state or other governmental unit or subdivision or an agency,  
11 department or instrumentality;

12 [F-] G. "product value" means the amount paid, net  
13 of any discounts taken and allowed, for tobacco products or, in  
14 the case of tobacco products received on consignment, the value  
15 of the tobacco products received or, in the case of tobacco  
16 products manufactured and sold in New Mexico, the proceeds from  
17 the sale by the manufacturer of the tobacco products; and

18 [G-] H. "tobacco product" means:

19 (1) any product, other than cigarettes, made  
20 of or derived from [or containing] tobacco or nicotine that is  
21 intended for human consumption, whether smoked, heated, chewed,  
22 absorbed, dissolved, inhaled, snorted, sniffed or ingested by  
23 any other means, including cigars, chewing tobacco, e-  
24 cigarettes, pipe tobacco or snuff; and

25 (2) any component, part or accessory used to

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1 consume tobacco but does not include any product that has been  
2 approved by the United States food and drug administration for  
3 sale as a tobacco cessation product or for other therapeutic  
4 purposes where such product is marketed and sold solely for  
5 such an approved use."

6 SECTION 6. Section 7-12A-3 NMSA 1978 (being Laws 1986,  
7 Chapter 112, Section 4, as amended) is amended to read:

8 "7-12A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
9 "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

10 A. For the privilege of engaging in business to  
11 manufacture [~~or acquisition of~~], acquire or distribute tobacco  
12 products [~~in New Mexico to be distributed~~] in the ordinary  
13 course of business and for the [~~consumption of~~] privilege of  
14 consuming tobacco products in New Mexico, there is imposed an  
15 excise tax at the rate of [~~twenty-five~~] seventy-six percent of  
16 the product value of the tobacco products.

17 B. The tax imposed by Subsection A of this section  
18 may be referred to as the "tobacco products tax".

19 C. The tobacco products tax shall be paid by the  
20 first purchaser on or before the twenty-fifth day of the month  
21 following the month in which the taxable event occurs."

22 SECTION 7. EFFECTIVE DATE.--The effective date of the  
23 provisions of this act is July 1, 2018.