

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 86

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO TOBACCO; ENHANCING CIGARETTE STAMP PROCEDURES;
PROVIDING FOR TAX-EXEMPT STAMPS; ADJUSTING CERTAIN TAX STAMP
DISCOUNTS; EXPANDING REPORTING AND LICENSING REQUIREMENTS;
PROVIDING CIVIL AND CRIMINAL PENALTIES; AMENDING, REPEALING AND
ENACTING SECTIONS OF THE CIGARETTE TAX ACT; MAKING AN
APPROPRIATION.

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

Section 1. Section 7-12-2 NMSA 1978 (being Laws 1971,
Chapter 77, Section 2, as amended) is amended to read:

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

A. "cigarette" means [any] a roll of tobacco [or
any substitute therefor] wrapped in paper or [any] in a
substance [other than] not containing tobacco, and "cigarette"
includes bidis and kreteks;

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1 ~~[B. "person" means any individual, estate, trust,~~
2 ~~receiver, cooperative association, club, corporation, company,~~
3 ~~firm, partnership, joint venture, syndicate or other entity;]~~

4 B. "contraband cigarettes" means cigarette packages
5 with counterfeit stamps, cigarettes that have false or
6 fraudulent manufacturing labels and cigarette packages without
7 the tax or tax-exempt stamps required under the Cigarette Tax
8 Act;

9 C. "department" means the taxation and revenue
10 department, the secretary of taxation and revenue or any
11 employee of the department exercising authority lawfully
12 delegated to that employee; ~~[by the secretary~~

13 ~~D. "secretary" means the secretary of taxation and~~
14 ~~revenue;]~~

15 D. "distributor" means a person, other than a
16 retailer, that sells or distributes cigarettes in New Mexico.

17 "Distributor" does not include:

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

24 (2) a common or contract carrier transporting
25 cigarettes under a bill of lading or freight bill, or a person

1 who ships cigarettes through the state by a common or contract
 2 carrier under a bill of lading or freight bill;

3 E. "license" means a license granted pursuant to
 4 the Cigarette Tax Act that authorizes the holder to conduct
 5 business as a manufacturer or distributor of cigarettes;

6 F. "manufacturer" means a person that manufactures,
 7 fabricates, assembles, processes or labels a cigarette or that
 8 imports from outside the United States, directly or indirectly,
 9 a finished cigarette for sale or distribution in the United
 10 States;

11 G. "master settlement agreement" means the
 12 settlement agreement and related documents entered into on
 13 November 23, 1998 by the state and leading United States
 14 tobacco product manufacturers;

15 H. "package" means the individual pack, box or
 16 other container that contains cigarettes, but "package" does
 17 not include a container that itself contains other containers,
 18 such as a carton of cigarettes;

19 I. "retailer" means a person, whether located
 20 within or outside New Mexico, that sells or distributes
 21 cigarettes to a consumer in New Mexico;

22 ~~[E.]~~ J. "stamp" means [any authorized label which
 23 ~~is issued to cover the tax in multiples of five cigarettes] an~~
 24 adhesive label issued and authorized by the department to be
 25 affixed to cigarette packages for excise tax purposes and upon

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1 which is printed a serial number and the words "State of New
2 Mexico" and "tobacco tax" [~~and which is coated with an adhesive~~
3 ~~to affix the stamp to a package so that the stamp, once~~
4 ~~affixed, cannot be removed without destroying it;~~

5 F. ~~"stamped" means a package or container of~~
6 ~~cigarettes to which a cigarette tax stamp has been affixed as~~
7 ~~provided in the Cigarette Tax Act; and~~

8 G. ~~"unstamped" means a package or container of~~
9 ~~cigarettes to which the cigarette tax stamp provided for in the~~
10 ~~Cigarette Tax Act has not been affixed];~~

11 K. "tax stamp" means a stamp that has a specific
12 excise tax value pursuant to Section 7-12-3 NMSA 1978; and

13 L. "tax-exempt stamp" means a stamp that indicates
14 a tax-exempt status pursuant to Section 7-12-4 NMSA 1978. "

15 Section 2. Section 7-12-3.1 NMSA 1978 (being Laws 1986,
16 Chapter 13, Section 3, as amended) is amended to read:

17 "7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--
18 DATE PAYMENT OF TAX DUE. --

19 A. A cigarette inventory tax is imposed, measured
20 by the quantity of cigarette stamps, whether or not affixed to
21 packages of cigarettes, in the possession of a person who is
22 required by Subsection [C] A of Section 7-12-5 NMSA 1978 to
23 affix stamps on the date on which an increase in the excise tax
24 imposed by Section 7-12-3 NMSA 1978 is effective. The taxable
25 event is the existence of an inventory of cigarette stamps,

1 whether or not affixed to packages of cigarettes, in the
 2 possession of a person who is required by Subsection [€] A of
 3 Section 7-12-5 NMSA 1978 to affix stamps on the date on which
 4 an increase in the excise tax imposed by Section 7-12-3 NMSA
 5 1978 is effective. The rate of the cigarette inventory tax to
 6 apply to cigarette stamps held in inventory shall be the amount
 7 of the increase in the cigarette tax imposed by Section 7-12-3
 8 NMSA 1978.

9 B. The cigarette inventory tax is to be paid to the
 10 department on or before the twenty-fifth day of the month
 11 following the month in which the taxable event occurs. "

12 Section 3. Section 7-12-3.2 NMSA 1978 (being Laws 1986,
 13 Chapter 13, Section 4) is amended to read:

14 "7-12-3.2. CIGARETTE INVENTORIES. --

15 A. On any date on which the excise tax imposed by
 16 Section 7-12-3 NMSA 1978 is increased, each person who is
 17 required by Subsection [€] A of Section 7-12-5 NMSA 1978 to
 18 affix stamps shall take inventory of cigarette stamps on hand,
 19 including stamps affixed to packages of cigarettes.

20 B. Each person required to take an inventory by
 21 Subsection A of this section shall report the total number of
 22 cigarette stamps in inventory on the date on which the tax
 23 imposed by Section 7-12-3 NMSA 1978 changes and pay any tax due
 24 imposed by Section 7-12-3.1 NMSA 1978. "

25 Section 4. Section 7-12-5 NMSA 1978 (being Laws 1971,

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1 Chapter 77, Section 5, as amended) is amended to read:

2 "7-12-5. AFFIXING STAMPS. --

3 A. Except as provided in Section 7-12-6 NMSA 1978,
4 all cigarettes [the sale, gift or consumption of which is
5 subject to the cigarette tax] shall be placed in packages [or
6 containers] to which a stamp [may] shall be affixed. Only a
7 distributor with a valid license issued pursuant to the
8 Cigarette Tax Act may purchase or obtain stamps. Stamps shall
9 be applied by the licensed distributor to each package of
10 cigarettes to be sold or distributed in New Mexico within ten
11 days of receipt of those packages. A distributor shall not
12 sell or provide stamps to another distributor or person.

13 B. A distributor shall apply stamps only to
14 cigarette packages that it has received directly from a
15 manufacturer or importer of cigarettes that possesses a valid
16 and current permit pursuant to 26 U.S.C. 5713.

17 [~~B.~~] C. Packages [or containers to which a stamp is
18 required to be affixed and which] that contain cigarettes that
19 are not in multiples of five cigarettes shall have affixed a
20 stamp of the next higher multiple of five cigarettes.

21 [~~C.~~] D. Unless the requirements of this section are
22 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall
23 be affixed to each package [or container of cigarettes, the
24 sale, gift or consumption of which is subject to the cigarette
25 tax. The stamp shall be affixed by any person who sells in New

1 ~~Mexico cigarettes manufactured by that person or who receives~~
 2 ~~on consignment or buys unstamped cigarettes for sale, gift or~~
 3 ~~consumption in New Mexico] of cigarettes subject to the~~
 4 ~~cigarette tax pursuant to Section 7-12-3 NMSA 1978, and a tax-~~
 5 ~~exempt stamp shall be affixed to each package of cigarettes not~~
 6 ~~subject to the cigarette tax pursuant to Section 7-12-4 NMSA~~
 7 ~~1978.~~

8 ~~[D.]~~ E. Stamps shall be affixed inside the
 9 boundaries of New Mexico, unless the department has granted a
 10 license allowing a person to affix stamps outside New Mexico. "

11 Section 5. Section 7-12-6 NMSA 1978 (being Laws 1971,
 12 Chapter 77, Section 6, as amended) is amended to read:

13 "7-12-6. WAIVER OF REQUIREMENT THAT STAMPS BE
 14 AFFIXED. --The requirement imposed in Section 7-12-5 NMSA 1978
 15 that stamps be affixed to packages ~~[or containers]~~ of
 16 cigarettes is waived if

17 ~~[A. the cigarettes are sold on railroad passenger~~
 18 ~~trains in New Mexico. When unstamped cigarettes are sold on~~
 19 ~~railroad passenger trains in New Mexico, the seller shall remit~~
 20 ~~to the department the tax imposed in Section 7-12-3 NMSA 1978~~
 21 ~~on or before the twenty-fifth day of the month following the~~
 22 ~~month in which sales of unstamped cigarettes are made on~~
 23 ~~railroad passenger trains in New Mexico; or~~

24 ~~B. the cigarettes are distributed by a cigarette~~
 25 ~~manufacturer to consumers within the state of New Mexico as~~

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1 ~~free samples. When unstamped cigarettes are distributed by a~~
2 ~~cigarette manufacturer in New Mexico as free samples, the~~
3 ~~manufacturer shall remit to the department the tax imposed in~~
4 ~~Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of~~
5 ~~the month following the month in which distributions of~~
6 ~~unstamped cigarettes are made] the cigarettes are distributed~~
7 ~~by a manufacturer pursuant to federal regulations and are~~
8 ~~exempt from tax pursuant to 26 U.S.C. 5704. "~~

9 Section 6. Section 7-12-7 NMSA 1978 (being Laws 1971,
10 Chapter 77, Section 7, as amended) is amended to read:

11 "7-12-7. SALE OF STAMPS-- ~~[PRICES]~~ NUMBERING-- DISCOUNTS. --

12 A. The department shall sell stamps ~~[to any person~~
13 ~~who sells in New Mexico cigarettes manufactured by that person~~
14 ~~and to any person who receives on consignment or buys unstamped~~
15 ~~cigarettes for sale, gift or consumption in New Mexico,~~
16 ~~provided such persons are registered with the department under~~
17 ~~the provisions of Section 7-1-12 NMSA 1978] only to~~
18 ~~distributors licensed pursuant to the Cigarette Tax Act.~~

19 B. Each roll or group of sheets of stamps shall
20 have a separate serial number, which shall be legible at the
21 point of sale. The department shall keep records of which
22 distributor purchases each roll or group of sheets. Stamps
23 bearing the same serial number shall not be sold to more than
24 one distributor.

25 C. Tax stamps shall be sold at their face value

1 with the following discounts:

2 (1) [~~four~~] one percent less than the face
 3 value of the first thirty thousand dollars (\$30,000) of stamps
 4 purchased in one calendar month;

5 (2) [~~three~~] eight-tenths percent less than the
 6 face value of the second thirty thousand dollars (\$30,000) of
 7 stamps purchased in one calendar month; and

8 (3) [~~two~~] five-tenths percent less than the
 9 face value of all stamps purchased in excess of sixty thousand
 10 dollars (\$60,000) in one calendar month.

11 [~~B.~~] D. If the face value of tax stamps sold in a
 12 single sale is less than one thousand dollars (\$1,000), the
 13 discount provided for in this section shall not be allowed.

14 [~~C.~~] E. Payment for tax stamps shall be made on or
 15 before the twenty-fifth day of the month following the month in
 16 which the sale of stamps by the department is made.

17 F. Tax-exempt stamps shall be provided only to
 18 licensed distributors and shall be free of charge; provided
 19 that the distributor is in full compliance with the reporting
 20 requirements of the Cigarette Tax Act and rules promulgated
 21 pursuant to that act."

22 Section 7. Section 7-12-9 NMSA 1978 (being Laws 1971,
 23 Chapter 77, Section 9, as amended) is amended to read:

24 "7-12-9. LICENSE NECESSARY TO ENGAGE IN BUSINESS OF
 25 SELLING CIGARETTES IN NEW MEXICO. -- [~~Each~~]

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1 A. A person shall not engage in business as a
2 manufacturer or distributor without first obtaining a license
3 from the department.

4 B. A manufacturer or distributor shall sell or
5 distribute cigarettes within New Mexico only to a distributor
6 with a valid current license or to a retailer. A distributor
7 or retailer shall obtain cigarettes within New Mexico only from
8 a manufacturer or distributor with a valid current license.

9 C. The department shall, by rule, specify the
10 length of time for which a license remains in effect, except
11 that a license issued pursuant to this section shall not remain
12 in effect for longer than two years.

13 D. An application for a license shall be submitted
14 on a form established by the department and shall provide:

15 (1) the name and address of the applicant and,
16 if the applicant is a firm, partnership or association, the
17 name and address of each of its members and, if the applicant
18 is a corporation, the name and address of each of its officers;

19 (2) the address of the applicant's principal
20 place of business and every location where the applicant's
21 business is conducted; and

22 (3) any other information the department may
23 require.

24 E. A person engaging in business as a distributor
25 or manufacturer or a combination of these activities shall

1 obtain a separate license for each activity.

2 F. A license may not be granted, maintained or
 3 renewed if any of the following conditions applies to the
 4 applicant:

5 (1) the applicant owes five hundred dollars
 6 (\$500) or more in delinquent cigarette taxes;

7 (2) the applicant had a manufacturer or
 8 distributor license revoked by the department within the past
 9 two years;

10 (3) the applicant was convicted of a crime
 11 relating to contraband or stolen cigarettes;

12 (4) the applicant was convicted of a felony;

13 (5) the applicant is a manufacturer but not a
 14 participating manufacturer as defined in Section II(jj) of the
 15 master settlement agreement and the applicant is not in
 16 compliance with the provisions of Section 6-4-13 NMSA 1978 or
 17 the Tobacco Escrow Fund Act; or

18 (6) the applicant is a manufacturer and
 19 imports cigarettes into the United States that are in violation
 20 of 19 U. S. C. 1681a or manufactures cigarettes that do not
 21 comply with the Federal Cigarette Labeling and Advertising Act,
 22 as amended.

23 G. In addition to any civil or criminal penalty
 24 provided by law, upon a finding that a licensee has violated a
 25 provision of the Cigarette Tax Act, the department may revoke

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1 or suspend the license or licenses of the licensee.

2 H. The department shall create and maintain a web
3 site listing all current licensees and the licenses they hold
4 pursuant to the Cigarette Tax Act.

5 I. A person engaged in the business of selling
6 cigarettes in New Mexico shall register and comply with the
7 provisions of Section 7-1-12 NMSA 1978.

8 J. [Every] A person selling cigarettes in New
9 Mexico shall furnish [such] information [as may be] requested
10 by the department concerning that person's vending machines or
11 other places of business where cigarettes are sold.

12 K. As used in this section, "applicant" includes a
13 person or persons owning, directly or indirectly, in the
14 aggregate, more than ten percent of the ownership interest in
15 the business holding or applying for a license."

16 Section 8. Section 7-12-10 NMSA 1978 (being Laws 1971,
17 Chapter 77, Section 10, as amended) is repealed and a new
18 Section 7-12-10 NMSA 1978 is enacted to read:

19 "7-12-10. [NEW MATERIAL] RETENTION OF INVOICES AND
20 RECORDS--INSPECTION BY DEPARTMENT.--

21 A. A distributor, retailer or manufacturer shall
22 maintain copies of invoices for each of its facilities for
23 every transaction involving a cigarette sale, purchase,
24 transfer, receipt or consignment; provided that a retailer need
25 not retain copies of invoices for sales of cigarettes to

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1 consumers. An invoice shall show:

2 (1) the names and addresses of all persons
 3 involved in the transaction, including sellers, purchasers,
 4 consignors and consignees; provided that if a transaction
 5 involves another facility of the same distributor, retailer or
 6 manufacturer, the invoice shall show the address of that
 7 facility;

8 (2) the date;

9 (3) the price; and

10 (4) the quantity of each brand of cigarettes
 11 involved in each transaction.

12 B. Records required pursuant to Subsection A of
 13 this section shall be preserved on the premises described in
 14 the license in such a manner as to ensure permanency and
 15 accessibility for inspection at reasonable hours by the
 16 department. With the department's permission, manufacturers,
 17 distributors and retailers with multiple places of business may
 18 retain centralized records, but shall transmit duplicates of
 19 the records to each place of business within twenty-four hours
 20 upon the request of the department.

21 C. The records required pursuant to Subsection A of
 22 this section shall be retained for a period of three years from
 23 the end of the year in which the transaction occurred unless
 24 otherwise required by law to be retained for a longer period of
 25 time.

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1 D. The department and the secretary of the United
2 States department of treasury, or a designee, may inspect the
3 reports and records required pursuant to the Cigarette Tax Act
4 along with any stock of cigarettes in the possession of the
5 manufacturer, distributor or retailer. The department, at its
6 sole discretion, may share those records and reports with law
7 enforcement officials of the federal government, other states
8 and international authorities.

9 E. The department shall have authority to enter and
10 inspect the facilities and records of a manufacturer,
11 distributor or retailer without a warrant during normal
12 business hours and with a warrant during non-business hours.

13 F. If the department or a law enforcement officer
14 has reasonable suspicion to believe that a vehicle is
15 transporting cigarettes in violation of the Cigarette Tax Act,
16 the department or the law enforcement officer is authorized to
17 stop the vehicle and, with probable cause, inspect it for
18 contraband cigarettes or cigarettes in violation of the
19 provisions of the Cigarette Tax Act. "

20 Section 9. Section 7-12-11 NMSA 1978 (being Laws 1971,
21 Chapter 77, Section 11) is amended to read:

22 "7-12-11. EXPORT SELLERS-- PHYSICAL SEGREGATION OF
23 CIGARETTES TO BE EXPORTED. -- [Any person]

24 A. A distributor selling and shipping cigarettes
25 outside New Mexico may maintain unstamped [~~cigarettes~~]

1 cigarette packages on [~~his~~] the distributor's premises if the
 2 unstamped [~~cigarettes~~] packages to be shipped outside the state
 3 are kept in a separate part of [~~his~~] the distributor's place of
 4 business, physically segregated from cigarettes to be sold
 5 inside New Mexico and clearly identified as cigarettes for
 6 shipment outside the state. Unstamped cigarette packages shall
 7 not be transferred by a distributor to another facility of the
 8 distributor or to another person within New Mexico. If
 9 cigarettes to be sold outside New Mexico are intermingled with
 10 cigarettes to be sold inside New Mexico, they shall be stamped
 11 and treated for purposes of the Cigarette Tax Act as cigarettes
 12 to be sold inside New Mexico.

13 B. A person doing business as both a distributor
 14 and a retailer shall maintain separate areas for stamped and
 15 unstamped cigarette packages."

16 Section 10. Section 7-12-12 NMSA 1978 (being Laws 1971,
 17 Chapter 77, Section 12, as amended) is amended to read:

18 "7-12-12. SHIPMENT OF UNSTAMPED CIGARETTES IN NEW
 19 MEXICO. --

20 A. A person that ships unstamped cigarette packages
 21 into New Mexico other than to a licensed distributor shall
 22 first file a notice of the shipment with the department.

23 B. A person that transports unstamped cigarette
 24 packages into or within New Mexico shall carry, in the
 25 transporting vehicle, invoices or equivalent documents

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1 applicable to all cigarettes in the shipment. The invoices or
2 documents shall show the name and address of the consignor or
3 seller, the name and address of the consignee or purchaser and
4 the quantity of each brand of cigarettes transported.

5 C. The provisions of Subsections A and B of this
6 section shall not apply to a common or contract carrier
7 transporting cigarettes through New Mexico to another location
8 under a proper bill of lading or freight bill that states the
9 quantity, source and destination of the cigarettes.

10 D. The [secretary] department may, by regulation,
11 require and prescribe the contents of reports to be filed with
12 the department by persons transporting unstamped [cigarettes]
13 cigarette packages in New Mexico. "

14 Section 11. Section 7-12-13 NMSA 1978 (being Laws 1971,
15 Chapter 77, Section 13, as amended) is repealed and a new
16 Section 7-12-13 NMSA 1978 is enacted to read:

17 "7-12-13. [NEW MATERIAL] CIVIL PENALTIES. --

18 A. Whoever knowingly omits, neglects or refuses to
19 comply with the provisions of the Cigarette Tax Act shall, in
20 addition to any other penalty provided in that act, be liable
21 for a penalty up to one thousand dollars (\$1,000).

22 B. Whoever fails to pay a tax imposed pursuant to
23 the Cigarette Tax Act at the time due shall, in addition to any
24 other penalty provided in that act, be liable for a penalty of
25 five hundred percent of the tax due but unpaid.

1 C. Cigarettes held for sale or distribution within
 2 New Mexico in violation of the provisions of the Cigarette Tax
 3 Act, and the machinery used to manufacture them, shall be
 4 subject to seizure, forfeiture and destruction. "

5 Section 12. A new section of the Cigarette Tax Act is
 6 enacted to read:

7 "[NEW MATERIAL] REPORTS. --

8 A. A distributor shall submit periodic reports to
 9 the department, in the manner and on the form prescribed by the
 10 department. A distributor shall submit a separate report for
 11 each of its facilities. The information in the report shall be
 12 itemized and shall clearly disclose cigarette brands,
 13 quantities and the type of stamp applied to cigarette packages.
 14 A report shall include:

15 (1) an inventory of stamped and unstamped
 16 cigarette packages held for sale or distribution within New
 17 Mexico at the beginning of the reporting period;

18 (2) the quantity of stamped cigarette packages
 19 held for sale or distribution within New Mexico that were
 20 received from another person during the reporting period and
 21 the name and address of each person from whom each quantity was
 22 received;

23 (3) the quantity of New Mexico stamped
 24 cigarette packages that were distributed or shipped to another
 25 distributor or retailer within New Mexico during the reporting

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1 period and the name and address of each person to whom each
2 quantity was distributed or shipped;

3 (4) the quantity of New Mexico stamped
4 cigarette packages that were distributed or shipped to another
5 facility of the same distributor within New Mexico during the
6 reporting period and the address of the facility;

7 (5) the quantity of stamped cigarette packages
8 that were distributed or shipped within New Mexico to Indian
9 tribal entities, pueblos or smoke shops or to instrumentalities
10 of the federal government during the reporting period and the
11 name and address of each person, entity or instrumentality to
12 whom each quantity was distributed or shipped;

13 (6) an inventory of stamped and unstamped
14 cigarette packages held for sale or distribution within New
15 Mexico at the end of the reporting period;

16 (7) an inventory of cigarette packages held
17 for sale or distribution outside of New Mexico at the beginning
18 of the reporting period;

19 (8) the quantity of cigarette packages held
20 for sale or distribution outside New Mexico that were received
21 from another person during the reporting period and the name
22 and address of each person from whom each quantity was
23 received;

24 (9) the quantity of cigarette packages that
25 were distributed or shipped outside New Mexico during the

1 reporting period;

2 (10) an inventory of cigarette packages held
 3 for sale or distribution outside New Mexico at the end of the
 4 reporting period;

5 (11) the number of each type of stamp on hand
 6 at the beginning of the reporting period;

7 (12) the number of each type of stamp
 8 purchased or received during the reporting period;

9 (13) the number of each type of stamp applied
 10 during the reporting period; and

11 (14) the number of each type of stamp on hand
 12 at the end of the reporting period.

13 B. A manufacturer shall submit periodic reports, in
 14 the manner and on the form prescribed by the department. The
 15 information in the report shall be itemized to clearly disclose
 16 cigarette brands and quantities. The reports shall be provided
 17 separately with respect to each of the facilities operated by
 18 the manufacturer. A report shall contain the quantity of
 19 cigarette packages that were distributed or shipped:

20 (1) to a manufacturer, distributor or retailer
 21 within New Mexico during the reporting period and the name and
 22 address of each person to whom each quantity was distributed or
 23 shipped;

24 (2) to another facility within New Mexico of
 25 the same manufacturer during the reporting period and the

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1 address of the facility; and

2 (3) within New Mexico to Indian tribal
3 entities, pueblos or smoke shops or instrumentalities of the
4 federal government during the reporting period and the name and
5 address of each person to whom each quantity was distributed or
6 shipped.

7 C. The department may require additional
8 information to be submitted. The department shall establish
9 the reporting period, which shall be no longer than three
10 calendar months and no shorter than one calendar month."

11 Section 13. A new section of the Cigarette Tax Act is
12 enacted to read:

13 "[NEW MATERIAL] CRIMINAL PENALTIES. --

14 A. Whoever violates a provision of the Cigarette
15 Tax Act or a rule promulgated pursuant to that act is guilty of
16 a misdemeanor and shall be sentenced in accordance with the
17 provisions of Section 31-19-1 NMSA 1978.

18 B. Whoever, with intent to defraud, fails to comply
19 with a requirement of the Cigarette Tax Act or with a rule
20 promulgated pursuant to that act is guilty of a fourth degree
21 felony and shall be sentenced in accordance with the provisions
22 of Section 31-18-15 NMSA 1978.

23 C. Notwithstanding any other provision of law, the
24 sale or possession for sale of contraband cigarettes is
25 unlawful and shall result in the seizure of the product and

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1 related machinery and be punishable as follows:

2 (1) a violation with a quantity of fewer than
 3 two cartons of contraband cigarettes, or the equivalent, is a
 4 petty misdemeanor punishable in accordance with the provisions
 5 of Section 31-19-1 NMSA 1978;

6 (2) a first violation with a quantity of two
 7 cartons or more of contraband cigarettes, or the equivalent, is
 8 a misdemeanor punishable in accordance with the provisions of
 9 Section 31-19-1 NMSA 1978; and

10 (3) a second or subsequent violation with a
 11 quantity of two cartons or more of contraband cigarettes, or
 12 the equivalent, is a fourth degree felony punishable by a fine
 13 not to exceed fifty thousand dollars (\$50,000) or imprisonment
 14 for a definite term not to exceed eighteen months, or both, and
 15 shall also result in the revocation by the department of the
 16 manufacturer or distributor license, if any.

17 D. A contraband cigarette seized by the department
 18 or by a law enforcement agency shall be destroyed.

19 E. Prosecution for a violation of a provision of
 20 this section does not preclude prosecution under other
 21 applicable laws. "

22 Section 14. APPROPRIATION. --Four hundred thousand dollars
 23 (\$400,000) is appropriated from the general fund to the
 24 taxation and revenue department for expenditure in fiscal year
 25 2005 to implement the provisions of this act. Any unexpended

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1 or unencumbered balance remaining at the end of fiscal year
2 2005 shall revert to the general fund.

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