

AN ACT

RELATING TO TOBACCO; CHANGING AND ADDING DEFINITIONS IN THE CIGARETTE TAX ACT; EXPANDING CIGARETTE PACKAGING AMOUNTS; PROVIDING FOR EXCISE TAX RATES BASED ON PACKAGING; AMENDING THE CIGARETTE TAX ACT.

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:

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

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

B. "contraband cigarettes" means cigarette packages with counterfeit stamps, counterfeit cigarettes,

cigarettes that have false or fraudulent manufacturing labels, cigarettes not sold in packages of five, ten, twenty or twenty-five and cigarette packages without the tax or tax-exempt stamps required by the Cigarette Tax Act;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee;

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

(1) a retailer;

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

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

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

business as a manufacturer or distributor of cigarettes;

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

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

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

I. "retailer" means a person, whether located within or outside of New Mexico, that sells cigarettes at retail to a consumer in New Mexico and the sale is not for resale;

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

K. "tax stamp" means a stamp that has a specific cigarette tax value pursuant to the Cigarette Tax Act; and

L. "tax-exempt stamp" means a stamp that indicates a tax-exempt status pursuant to the Cigarette Tax Act."

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

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

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

(1) four and fifty-five hundredths cents (\$.0455) if the cigarettes are packaged in lots of twenty or twenty-five;

(2) nine and ten-hundredths cents (\$.091) if the cigarettes are packaged in lots of ten; or

(3) eighteen and twenty-hundredths cents (\$.182) if the cigarettes are packaged in lots of five.

B. The tax imposed by this section shall be referred to as the "cigarette tax".

Section 3. Section 7-12-5 NMSA 1978 (being Laws 1971, Chapter 77, Section 5, as amended) is amended to read:

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

A. Except as provided in Section 7-12-6 NMSA 1978, all cigarettes shall be placed in packages or containers to which a stamp shall be affixed. Only a distributor with a valid license issued pursuant to the Cigarette Tax Act may

purchase or obtain unaffixed tax-exempt stamps or tax stamps. A distributor shall not sell or provide unaffixed stamps to another distributor, manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713 or any other person.

B. Stamps shall be affixed by the distributor to each package of cigarettes to be sold or distributed in New Mexico within ten days of receipt of those packages.

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

D. Packages shall contain cigarettes in lots of five, ten, twenty or twenty-five.

E. Unless the requirements of this section are waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall be affixed to each package of cigarettes subject to the cigarette tax and a tax-exempt stamp shall be affixed to each package of cigarettes not subject to the cigarette tax pursuant to Section 7-12-4 NMSA 1978.

F. A tax-exempt stamp is not an excise tax stamp for purposes of determining units sold pursuant to Section 6-4-12 NMSA 1978.

G. Stamps shall be affixed inside the boundaries of New Mexico, unless the department has granted a license

allowing a person to affix stamps outside New Mexico." HTRC/HB 984
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