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HOUSE BILL 133

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Karen E. Giannini

AN ACT

RELATING TO TAXATION; CREATING THE DISPOSABLE CARRY-OUT BAG TAX
ACT; IMPOSING AN EXCISE TAX ON DISPOSABLE CARRY-OUT BAGS;
MAKING DISTRIBUTIONS; MAKING AN APPROPRIATION.

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

Section 1. A new section of Chapter 7 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 4 of this
act may be cited as the "Disposable Carry-out Bag Tax Act"."

Section 2. A new section of Chapter 7 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Disposable
Carry-out Bag Tax Act:

A. "department" means the taxation and revenue
department, the secretary or any employee of the department

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1 exercising authority lawfully delegated to that employee by the
2 secretary;

3 B. "disposable carry-out bag":

4 (1) means a bag of any material, commonly
5 plastic or kraft paper, that is provided to a consumer at the
6 point of sale to carry purchases; and

7 (2) does not include:

8 (a) bags used by consumers inside a
9 store to: 1) package bulk items such as fruit, vegetables,
10 nuts, grains, candy or small hardware items; 2) contain or wrap
11 frozen foods, meat or fish, whether prepackaged or not; 3)
12 contain or wrap flowers, potted plants or other items where
13 dampness may be a problem; or 4) contain unwrapped prepared
14 foods or bakery goods;

15 (b) bags provided by pharmacists to
16 contain prescription drugs;

17 (c) newspaper bags, door-hanger bags,
18 laundry-dry cleaning bags or bags sold in packages containing
19 multiple bags intended for use as garbage, pet waste or yard
20 waste bags;

21 (d) paper carry-out bags that
22 restaurants provide to customers to take food away from the
23 retail establishment; or

24 (e) reusable carry-out bags;

25 C. "distribute" means to sell or to give;

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1 D. "engaging in business" means carrying on or
2 causing to be carried on any activity with the purpose of
3 direct or indirect benefit;

4 E. "first purchaser" means a person engaging in
5 business in New Mexico who manufactures disposable carry-out
6 bags or who purchases or receives disposable carry-out bags
7 from any person outside of New Mexico, which disposable carry-
8 out bags are to be distributed in New Mexico in the ordinary
9 course of business; and

10 F. "reusable carry-out bag" means a bag with
11 handles that is specifically designed and manufactured for
12 multiple reuse and is made of cloth, fiber, other machine
13 washable fabric or durable plastic that is at least two and
14 one-fourth millimeters thick."

15 Section 3. A new section of Chapter 7 NMSA 1978 is
16 enacted to read:

17 "[NEW MATERIAL] IMPOSITION AND RATE OF TAX--DENOMINATION
18 AS "DISPOSABLE CARRY-OUT BAG TAX"--DATE PAYMENT OF TAX DUE.--

19 A. For the manufacture, purchase or receipt of
20 disposable carry-out bags in New Mexico to be distributed in
21 the ordinary course of business in New Mexico there is imposed
22 an excise tax at the rate of five cents (\$.05) per bag on each
23 disposable carry-out bag.

24 B. The tax imposed by Subsection A of this section
25 may be referred to as the "disposable carry-out bag tax".

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1 C. The disposable carry-out bag tax shall be paid
2 by the first purchaser to the department on or before the
3 twenty-fifth day of the month following the month in which the
4 taxable event occurs."

5 Section 4. A new section of Chapter 7 NMSA 1978 is
6 enacted to read:

7 "[NEW MATERIAL] INTERPRETATION OF ACT--ADMINISTRATION AND
8 ENFORCEMENT OF TAX.--

9 A. The department shall interpret the provisions of
10 the Disposable Carry-out Bag Tax Act.

11 B. The department shall administer and enforce the
12 collection of the disposable carry-out bag tax, and the Tax
13 Administration Act applies to the administration and
14 enforcement of the tax."

15 Section 5. A new section of the Tax Administration Act is
16 enacted to read:

17 "[NEW MATERIAL] DISTRIBUTIONS OF DISPOSABLE CARRY-OUT BAG
18 TAX.--

19 A. A distribution pursuant to Section 7-1-6.1 NMSA
20 1978 shall be made to the public school fund in an amount equal
21 to sixty percent of the net receipts, exclusive of penalties
22 and interest, attributable to the disposable carry-out bag tax.

23 B. A distribution pursuant to Section 7-1-6.1 NMSA
24 1978 shall be made to the New Mexico youth conservation corps
25 fund in an amount equal to twenty percent of the net receipts,

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1 exclusive of penalties and interest, attributable to the
2 disposable carry-out bag tax.

3 C. A distribution pursuant to Section 7-1-6.1 NMSA
4 1978 shall be made to the department of environment for
5 recycling programs in an amount equal to twenty percent of the
6 net receipts, exclusive of penalties and interest, attributable
7 to the disposable carry-out bag tax."

8 Section 6. Section 7-1-2 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 2, as amended) is amended to read:

10 "7-1-2. APPLICABILITY.--The Tax Administration Act
11 applies to and governs:

12 A. the administration and enforcement of the
13 following taxes or tax acts as they now exist or may hereafter
14 be amended:

- 15 (1) Income Tax Act;
- 16 (2) Withholding Tax Act;
- 17 (3) Venture Capital Investment Act;
- 18 (4) Gross Receipts and Compensating Tax Act
19 and any state gross receipts tax;
- 20 (5) Liquor Excise Tax Act;
- 21 (6) Local Liquor Excise Tax Act;
- 22 (7) any municipal local option gross receipts
23 tax;
- 24 (8) any county local option gross receipts
25 tax;

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- 1 (9) Special Fuels Supplier Tax Act;
- 2 (10) Gasoline Tax Act;
- 3 (11) petroleum products loading fee, which fee
- 4 shall be considered a tax for the purpose of the Tax
- 5 Administration Act;
- 6 (12) Alternative Fuel Tax Act;
- 7 (13) Cigarette Tax Act;
- 8 (14) Estate Tax Act;
- 9 (15) Railroad Car Company Tax Act;
- 10 (16) Investment Credit Act, rural job tax
- 11 credit, Laboratory Partnership with Small Business Tax Credit
- 12 Act, Technology Jobs Tax Credit Act, film production tax
- 13 credit, New Mexico filmmaker tax credit, Affordable Housing Tax
- 14 Credit Act, high-wage jobs tax credit and Research and
- 15 Development Small Business Tax Credit Act;
- 16 (17) Corporate Income and Franchise Tax Act;
- 17 (18) Uniform Division of Income for Tax
- 18 Purposes Act;
- 19 (19) Multistate Tax Compact;
- 20 (20) Tobacco Products Tax Act; ~~and~~
- 21 (21) the telecommunications relay service
- 22 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 23 surcharge shall be considered a tax for the purposes of the Tax
- 24 Administration Act; and
- 25 (22) the Disposable Carry-out Bag Tax Act.

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1 B. the administration and enforcement of the
2 following taxes, surtaxes, advanced payments or tax acts as
3 they now exist or may hereafter be amended:

- 4 (1) Resources Excise Tax Act;
- 5 (2) Severance Tax Act;
- 6 (3) any severance surtax;
- 7 (4) Oil and Gas Severance Tax Act;
- 8 (5) Oil and Gas Conservation Tax Act;
- 9 (6) Oil and Gas Emergency School Tax Act;
- 10 (7) Oil and Gas Ad Valorem Production Tax Act;
- 11 (8) Natural Gas Processors Tax Act;
- 12 (9) Oil and Gas Production Equipment Ad
13 Valorem Tax Act;
- 14 (10) Copper Production Ad Valorem Tax Act;
- 15 (11) any advance payment required to be made
16 by any act specified in this subsection, which advance payment
17 shall be considered a tax for the purposes of the Tax
18 Administration Act;
- 19 (12) Enhanced Oil Recovery Act;
- 20 (13) Natural Gas and Crude Oil Production
21 Incentive Act; and
- 22 (14) intergovernmental production tax credit
23 and intergovernmental production equipment tax credit;

24 C. the administration and enforcement of the
25 following taxes, surcharges, fees or acts as they now exist or

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1 may hereafter be amended:

2 (1) Weight Distance Tax Act;

3 (2) the workers' compensation fee authorized
4 by Section 52-5-19 NMSA 1978, which fee shall be considered a
5 tax for purposes of the Tax Administration Act;

6 (3) Uniform Unclaimed Property Act (1995);

7 (4) 911 emergency surcharge and the network
8 and database surcharge, which surcharges shall be considered
9 taxes for purposes of the Tax Administration Act;

10 (5) the solid waste assessment fee authorized
11 by the Solid Waste Act, which fee shall be considered a tax for
12 purposes of the Tax Administration Act;

13 (6) the water conservation fee imposed by
14 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
15 for the purposes of the Tax Administration Act; and

16 (7) the gaming tax imposed pursuant to the
17 Gaming Control Act; and

18 D. the administration and enforcement of all other
19 laws, with respect to which the department is charged with
20 responsibilities pursuant to the Tax Administration Act, but
21 only to the extent that the other laws do not conflict with the
22 Tax Administration Act."

23 Section 7. APPLICABILITY.--A distribution pursuant to
24 Section 5 of this act applies to receipts from the disposable
25 carry-out bag tax that are attributable to transactions subject

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1 to the tax on or after July 1, 2010.

2 Section 8. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2010.

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