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HOUSE BILL 133

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO TAXATION; INCREASING THE RATE OF THE TOBACCO PRODUCTS TAX; CLARIFYING THE DEFINITION OF "TOBACCO PRODUCTS".

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

SECTION 1. Section 7-12A-2 NMSA 1978 (being Laws 1986, Chapter 112, Section 3, as amended) is amended to read:

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

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

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

C. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of

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1 direct or indirect benefit;

2 D. "first purchaser" means a person engaging in  
3 business in New Mexico who manufactures tobacco products or who  
4 purchases or receives on consignment tobacco products from any  
5 person outside of New Mexico, which tobacco products are to be  
6 distributed in New Mexico in the ordinary course of business;

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

16 F. "product value" means the amount paid, net of  
17 any discounts taken and allowed, for tobacco products or, in  
18 the case of tobacco products received on consignment, the value  
19 of the tobacco products received or, in the case of tobacco  
20 products manufactured and sold in New Mexico, the proceeds from  
21 the sale by the manufacturer of the tobacco products; and

22 G. "tobacco product" means any product, other than  
23 cigarettes, made from or containing tobacco, including cigars  
24 or any product containing tobacco that is intended or expected  
25 to be consumed without being combusted, unless it has been

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1 approved by the United States food and drug administration as a  
2 tobacco use cessation product and is being marketed and sold  
3 for that approved purpose."

4 SECTION 2. Section 7-12A-3 NMSA 1978 (being Laws 1986,  
5 Chapter 112, Section 4, as amended) is amended to read:

6 "7-12A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
7 "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

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

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

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

20 SECTION 3. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2012.