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SENATE BILL 77

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Howie C. Morales

AN ACT

RELATING TO TOBACCO; INCREASING THE CIGARETTE TAX RATES;
INCREASING THE TOBACCO PRODUCTS TAX RATE; EXPANDING THE TYPES
OF PRODUCTS SUBJECT TO THE TOBACCO PRODUCTS TAX; MAKING
DISTRIBUTIONS FROM THE CIGARETTE TAX AND THE TOBACCO PRODUCTS
TAX TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT FOR EARLY
CHILDHOOD EDUCATION.

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) is amended to read:

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

A. A distribution pursuant to Section 7-1-6.1 NMSA
1978 shall be made to the children, youth and families
department for early childhood education in an amount equal to
twenty-three percent of the net receipts, exclusive of

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1 penalties and interest, attributable to the cigarette tax.

2 ~~[G-]~~ B. A distribution pursuant to Section 7-1-6.1
3 NMSA 1978 shall be made to the cancer research and treatment
4 center at the university of New Mexico health sciences center
5 in an amount equal to eighty-three hundredths percent of the
6 net receipts, exclusive of penalties and interest, attributable
7 to the cigarette tax.

8 ~~[D-]~~ C. A distribution pursuant to Section 7-1-6.1
9 NMSA 1978 shall be made to the New Mexico finance authority in
10 an amount equal to one and twenty-five hundredths percent of
11 the net receipts, exclusive of penalties and interest,
12 attributable to the cigarette tax.

13 ~~[E-]~~ D. A distribution pursuant to Section 7-1-6.1
14 NMSA 1978 in an amount equal to eight and eighty-nine
15 hundredths percent of the net receipts, exclusive of penalties
16 and interest, attributable to the cigarette tax, shall be made,
17 on behalf of and for the benefit of the university of New
18 Mexico health sciences center, to the New Mexico finance
19 authority.

20 ~~[F-]~~ E. A distribution pursuant to Section 7-1-6.1
21 NMSA 1978 in an amount equal to three and seventy-four
22 hundredths percent of the net receipts, exclusive of penalties
23 and interest, attributable to the cigarette tax shall be made
24 to the New Mexico finance authority for land acquisition and
25 the planning, designing, construction and equipping of

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1 department of health facilities or improvements to such
2 facilities.

3 ~~[G.]~~ F. A distribution pursuant to Section 7-1-6.1
4 NMSA 1978 in an amount equal to nine and seventy-seven
5 hundredths percent of the net receipts, exclusive of penalties
6 and interest, attributable to the cigarette tax shall be made
7 to the New Mexico finance authority for deposit in the credit
8 enhancement account created in the authority.

9 ~~[H.]~~ G. A distribution pursuant to Section 7-1-6.1
10 NMSA 1978 in an amount equal to sixty-two hundredths percent of
11 the net receipts, exclusive of penalties and interest,
12 attributable to the cigarette tax shall be made, on behalf of
13 and for the benefit of the rural county cancer treatment fund,
14 to the New Mexico finance authority."

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

17 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

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

22 (1) ~~[eight and three-tenths cents (\$.083)]~~
23 thirteen and three-tenths cents (\$.133) if the cigarettes are
24 packaged in lots of twenty or twenty-five;

25 (2) ~~[sixteen and six-tenths cents (\$.166)]~~

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1 twenty-six and six-tenths cents (\$.266) if the cigarettes are
2 packaged in lots of ten; or

3 (3) [~~thirty-three and two-tenths cents~~
4 ~~(\$.332)~~] fifty-three and two-tenths cents (\$.532) if the
5 cigarettes are packaged in lots of five.

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

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

10 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products
11 Tax Act:

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

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

17 C. "engaging in business" means carrying on or
18 causing to be carried on any activity with the purpose of
19 direct or indirect benefit;

20 D. "first purchaser" means a person engaging in
21 business in New Mexico who manufactures tobacco products or who
22 purchases or receives on consignment tobacco products from any
23 person outside of New Mexico, which tobacco products are to be
24 distributed in New Mexico in the ordinary course of business;

25 E. "person" means [~~any~~] an individual, estate,

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1 trust, receiver, cooperative association, club, corporation,
2 company, firm, partnership, joint venture, syndicate, limited
3 liability company, limited liability partnership, other
4 association or gas, water or electric utility owned or operated
5 by a county or municipality or other entity of the state;
6 "person" also means, to the extent permitted by law, a federal,
7 state or other governmental unit or subdivision or an agency,
8 department or instrumentality;

9 F. "product value" means the amount paid, net of
10 any discounts taken and allowed, for tobacco products or, in
11 the case of tobacco products received on consignment, the value
12 of the tobacco products received or, in the case of tobacco
13 products manufactured and sold in New Mexico, the proceeds from
14 the sale by the manufacturer of the tobacco products; and

15 G. "tobacco product":

16 (1) means ~~[any]~~:

17 (a) a product, other than cigarettes,
18 that is made [from or containing] of, contains or is derived
19 from tobacco or nicotine and that is intended for human
20 consumption through means that include smoking, heating,
21 chewing, absorption, dissolution, inhalation, snorting and
22 sniffing; or

23 (b) an electronic device that delivers
24 nicotine or other substances to the person inhaling from the
25 device;

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(2) includes:

(a) a component, part or accessory of a tobacco product, regardless of whether it is sold separately; and

(b) a cigar, chewing tobacco, pipe tobacco, snuff, an electronic cigarette, an electronic cigar, an electronic pipe and an electronic hookah; and

(3) excludes a product that is:

(a) approved by the United States food and drug administration for sale as a tobacco cessation product or for another therapeutic purpose; and

(b) marketed and sold solely for that approved purpose."

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

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

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

B. The tax imposed by Subsection A of this section

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1 may be referred to as the "tobacco products tax".

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

5 SECTION 5. A new section of the Tax Administration Act is
6 enacted to read:

7 "[NEW MATERIAL] DISTRIBUTION OF TOBACCO TAXES.--A
8 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
9 made to the children, youth and families department for early
10 childhood education in an amount equal to forty-one percent of
11 the net receipts, exclusive of penalties and interest,
12 attributable to the tobacco products tax."

13 SECTION 6. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2016.