SENATE BILL 77

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

INTRODUCED BY

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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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penalties and interest, attributable to the cigarette tax.

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

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

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

[D–] E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to three and seventy-four hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for land acquisition and the planning, designing, construction and equipping of
department of health facilities or improvements to such facilities.

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

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

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) [eight and three-tenths cents ($.083)]

thirteen and three-tenths cents ($.133) if the cigarettes are packaged in lots of twenty or twenty-five;

(2) [sixteen and six-tenths cents ($.166)]
twenty-six and six-tenths cents ($0.266) if the cigarettes are
packaged in lots of ten; or

(3) [thirty-three and two-tenths cents
($0.332)] fifty-three and two-tenths cents ($0.532) 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 7-12A-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
direct or indirect benefit;

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

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

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

G. "tobacco product":

(1) means [any]:

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

(b) an electronic device that delivers nicotine or other substances to the person inhaling from the device:
(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
may be referred to as the "tobacco products tax".

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

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

"[NEW MATERIAL] DISTRIBUTION OF TOBACCO TAXES.--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 forty-one percent of the net receipts, exclusive of penalties and interest, attributable to the tobacco products tax."

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

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